

SEC9

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

)

KIK INTERACTIVE) File No. HO-13388-A

WITNESS: Paul Holland

PAGES: 1 through 257

PLACE: Securities and Exchange Commission

100 F Street, NE

Washington, D.C.

DATE: Friday, June 15, 2018

The above-entitled matter came on for hearing, pursuant to notice, at 9:50 a.m.

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 BRENT MITCHELL, ESQ.

5 JAMES MURTHA, ESQ.

6 JEFF LEASURE, ESQ.

7 STEPHAN SCHLEGELMILCH, ESQ.

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13 On behalf of the Witness:

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Page 3

1 APPEARANCES (Continued):

2

3 Also Present:

4 Katharine Harper, Intern

5 Daniel Kim, Intern

6 Steven Jones, Videographer

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Page 4

1 C O N T E N T S

2 WITNESS EXAMINATION

3 Paul Holland 5

4

5

6 EXHIBITS DESCRIPTION IDENTIFIED

7 42 Cover letter and subpoena 8

8 43 Goodwin Procter letter 35

9 44 Kik_Foundation_Cap_001289 - 291 77

10 46 Kik_Foundation_Cap_002087 - 2100 130

11 47 Kik_00001838 - 39 183

12 48 Kik_00103324 - 27 185

13 49 Kik_00117728 - 730 201

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This begins disc No. 1. The

3 time on the video monitor is 9:50 a.m.

4 MR. MITCHELL: Great. Okay.

5 Mr. Holland, do you -- could you raise your right

6 hand?

7 Whereupon,

8 PAUL HOLLAND

9 was called as a witness and, having been duly sworn,

10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. MITCHELL:

13 Q Can you please state and spell your full name for

14 the record?

15 A Paul Robbins Holland, P-a-u-l R-o-b-b-i-n-s H-o-

16 l-l-a-n-d.

17 Q My name is Brent Mitchell. With me today is James

18 Murtha, Jeff Leasure, and Stephan Schlegelmilch. We are all

19 officers of the Commission for purposes of this proceeding.

20 We also have two -- two interns working for the SEC today,

21 Katherine Harper and Daniel Kim.

22 This is an investigation by the United States

23 Securities and Exchange Commission in the matter of Kik

24 Interactive to determine whether there have been violations

25 of certain provisions of the federal securities laws.

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1 However, the facts developed in this investigation might
 2 constitute violations of other federal or state civil or
 3 criminal laws.

4 Prior to the opening of the record, I gave you a
 5 copy of the formal order of investigation in this matter,
 6 and I also gave you the supplemental order. It will be
 7 available for your examination during the course of the
 8 proceeding.

9 Mr. Holland, have you had an opportunity to review
 10 it?

11 A This document? I have not.

12 Q Okay.

13 MR. FONDO: So that's the supplemental.

14 THE WITNESS: Okay.

15 BY MR. MITCHELL:

16 Q So we're just going to hand you the formal order
 17 and the supplement. And, you know, take -- take whatever
 18 time you need.

19 A Yeah. Okay.

20 MR. FONDO: Just glance through it.

21 THE WITNESS: Right.

22 MR. FONDO: You don't have to read it.

23 THE WITNESS: Right. Yeah. I've read it.

24 BY MR. MITCHELL:

25 Q Okay. Also, I'll just -- if you want to, just put

Page 7

1 that in this folder and then just leave it on the table.

2 Also, before we opened the record, I talked to you
 3 -- I gave you what has been marked previously as Exhibit No.
 4 1. That is a copy of the Commission's supplemental
 5 information form often called a Form 1662.

6 Have you had the opportunity to read Exhibit 1?

7 A Yes, I have.

8 Q And do you have any questions about the form?

9 A No, I don't.

10 Q Are you represented today by counsel?

11 A Yes, I am.

12 Q Can your counsel represent -- can you -- can your
 13 counsels identify themselves for the record.

14 MR. FONDO: Yes. Grant Fondo for Goodwin Procter.

15 MS. CHESARI: Nicole Chessari for Goodwin
 16 Procter.

17 MR. ARMSTRONG: And Dave Armstrong at Foundation
 18 Capital.

19 MR. MITCHELL: Okay. And just to confirm, all
 20 three of you represent Mr. Holland personally?

21 MR. FONDO: No. Two of us do. Nicole and myself,
 22 Grant Fondo, represent Mr. Holland personally.

23 MR. MITCHELL: Okay. We're going to go off the
 24 record for a second.

25 THE VIDEOGRAPHER: Going off the record. The time

Page 8

1 on the video monitor is 9:53 a.m.

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: We are back on the record. The
 4 time on the monitor is 9:54 a.m.

5 MR. MITCHELL: Great. I think I've solved -- I
 6 think we've solved my -- the question I was going off the
 7 record for.

8 Mr. Armstrong, do you represent Mr. Holland in his
 9 role as an employee of Foundation Capital?

10 MR. ARMSTRONG: Yes. Thank you.

11 BY MR. MITCHELL:

12 Q All right. Mr. Holland, I'm going to give you
 13 what has been marked as Exhibit 42. And I'm going to give
 14 you it to you in a folder because I didn't staple it.

15 (SEC Exhibit No. 42 was marked for
 16 identification.)

17 BY MR. MITCHELL:

18 Q Exhibit 42 is a cover letter and a subpoena. Is
 19 that the subpoena that you're appearing here pursuant to
 20 today?

21 A Yes, it is.

22 Q Okay. All right. Let me take those back. And
 23 we'll -- those will just sit in the middle of the table. If
 24 anybody needs them, you're welcome to take them.

25 Can you give us sort of at a resume level line

Page 9

1 sort

2 of a -- just a feeling of what -- of your educational and
 3 professional background that got you to Foundation.

4 A Sure. So I -- I grew up here in -- about six
 5 miles east of here. If you know where Anacostia is, just on
 6 the other side, a place called Coral Hills. And then I
 7 ended up in school at James Madison and University of
 8 Virginia, met a girl at Virginia, followed her out to
 9 California, married her 29 years ago. And then, while I was
 10 out there, began my career at the Stanford Research
 11 Institute as a -- as a researcher. While there, in -- in a
 12 social interaction -- actually, in a hot tub, met my first
 13 CEO of my first start-up, a guy named Reed Hastings. And we
 14 did a company together called Pure Software, which was a, if
 15 you're familiar with it, runtime error detection technology
 16 for Unix work stations. It turned out to be a very popular
 17 technology. We took the company public in 1995.

18 I lived in the US and then in Europe for a few
 19 years as a result of that job.

20 At the end of that, he went on to start our
 21 company Netflix, which has gone well, and then I went to a
 22 company called Cona Communications and helped another
 23 friend, Mark Haney, take that company public in 1999.

24 So I worked at two start-up companies and then
 25 went to Foundation Capital in 2001. I had a mentor of mine

Page 10

1 who was one of the officers there, one of the partners, and
2 he invited me to come onboard. And so I've been there now
3 for the last 16 years.

4 Q And what's your role now?

5 A I'm a general -- general partner.

6 Q Have you been a general partner since you joined?

7 A No. I started as what's called a venture partner.
8 It's sort of a one-year try-and-buy kind of thing. And then
9 nine months into that, they asked me if I wanted to stay as
10 a general partner.

11 Q And at Foundation, do you have a specialization or
12 certain role within the company?

13 A Well, we have four general partners today. The
14 numbers vary over time with the different funds. And I have
15 a number of different areas in which I've done work:
16 Education technologies, I was on the board of a company
17 called Chegg, which is a public company now; mobile IT
18 technologies, I was on the board of a company called
19 MobileIron, or I was a board observer of MobileIron; and
20 then other areas, as they've come up, that are, you know,
21 kind of appropriate for me. And then other partners have
22 different specialties.

23 Q Okay. And, at some point -- at some point, you
24 became familiar with a company called Kik?

25 A Correct.

Page 11

1 Q Can you tell us sort of how that came about?

2 A Yes. So I was introduced to Kik by Sam Spadafora,
3 who's the chairman of the board of Kik. And Sam was the CEO
4 of one of Foundation Capital's early investments called
5 Cordiant. And I used to -- when I was in my kind of
6 interning mode, I used to go to the Cordiant board meetings
7 with our founder, Kathryn Gould. And so I met Sam through
8 that.

9 Sam introduced me to two companies. He introduced
10 me to Chegg, which is a company that's now a well-
11 established public company and where I made the investment,
12 and then he introduced me to Kik after that.

13 Q Okay. So Foundation Capital's business is you're
14 -- you're a venture capital firm?

15 A Correct, we're a venture capital firm.

16 Q So how do you -- when you have to describe to
17 somebody what -- what the company is looking to do, how --
18 how it makes money?

19 How do you describe sort of what its business is?

20 A Yes. So Foundation Capital invests in mostly
21 early-stage companies, often companies that they have no
22 revenue. And then we help those companies grow by
23 recruiting executive teams, introducing them to business
24 development partners, introducing them to the customers,
25 that type of thing.

Page 12

1 Q And when --

2 A And then, if the company is successful, then,
3 later, the company is either sold or goes public or -- or
4 reaches a liquidity event.

5 Q And when you invest in a -- so when you invest in
6 a company, you give them money, and they -- you get back
7 shares?

8 A Correct. Yeah.

9 Q And what's the long-term goal for -- when you make
10 those investments, what are you hoping is going to happen?

11 A The appreciation of the value of the company.

12 Q And the appreciation of the value of the shares?

13 A Correct.

14 Q And you -- is -- is -- sorry.

15 You said it's an early stage -- early stage?

16 A Early-stage --

17 Q What does that mean?

18 A -- venture capital firm.

19 Q What does that mean?

20 A There are various stages at which you can enter an
21 investment. You can do kind of public investments. So you
22 can do late-stage private investments. You can do early-
23 stage private investments. We tend to do early-stage
24 private investments.

25 Q "Public investments" means it's investing in

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1 companies whose shares trade publicly?

2 A Correct. So we invested -- just as an example, we
3 invested in Netflix in 1999 as a Series B investment. And
4 then, later, we invested in Netflix as a public company.

5 Q Is the early stage --

6 A About 70 percent of our business, we're the first
7 money in. We're the -- we're the Series A check-writer.

8 MR. FONDO: Let him -- let him finish his
9 questions.

10 THE WITNESS: Oh, sorry. Okay.

11 BY MR. MITCHELL:

12 Q It's fine.

13 A Yeah. Sorry.

14 Q This happens all the time.

15 A Yeah, yeah. Sorry.

16 Q We are --

17 A Yeah. I made a movie about this, so it's a couple
18 separate topics, so --

19 Q You made a movie about Netflix?

20 A No. I made a movie about the early-stage venture
21 capital called "Something Ventured."

22 Q Oh, got it.

23 A Yeah.

24 Q Okay. And so is early -- early stage is a riskier
25 stage than -- than -- than a later stage, or how do you

Page 14

1 describe that?

2 A Well, quite honestly, it depends, but yes.
3 Typically, I think that's the way people would think about
4 it. There's what's called higher beta in an early-stage
5 investment, so --

6 Q What's beta?

7 A Beta would be the notion that if it succeeds, it
8 would succeed substantially from the point at which you
9 entered the investment, but also there's a high risk of
10 failure.

11 Q And so when you're making investments, are you
12 weighing that kind of risk versus the reward?

13 A Correct.

14 Q How do -- how do you -- if you wanted to, say,
15 look at a -- value a company, how do you decide -- how do
16 you -- how do you -- if you want to value a company, how do
17 you go about doing that?

18 How would you analyze the value of a company?

19 A Typically, it's a negotiation with the
20 entrepreneur. It's -- at the early stages, since there's no
21 revenue and oftentimes there's no product, we're investing
22 in an idea. And -- and, at that time, there are -- there are
23 just certain conventions around where value might be
24 established. And so you have a negotiation with the
25 entrepreneur.

Page 15

1 And then, also, what -- what happens very often is
2 that we're in a competitive dynamic where we're competing
3 with other firms, and the market will sort of settle at some
4 sort of price.

5 Q And when you do that, what -- what are you -- how
6 do you -- how do you decide what -- I hear what you're
7 saying, how you negotiate to the value.

8 When you're trying to decide what you think it's
9 worth -- what it's worth, how do you go about doing that?

10 A It's usually just simply using historical, custom,
11 and your experience to sort of understand what the -- where
12 the company is today and what you think it should be worth.

13 Q How do you know where the company is today?

14 A By doing research on whether the company has
15 launched a product, whether it has revenue in market,
16 whether it has a number of users. It depends on what type
17 of company.

18 Q And is that all public information that you get?

19 A No. It's typically private information.

20 Q And that -- and that's important to deciding the
21 value or what -- or your perception of the value of the
22 company?

23 A It is part of the due diligence process that we do
24 to try to establish the value of a company, and also whether
25 or not we think the company is going to be a good

Page 16

1 investment.

2 Q And is the value of a company different than its
3 market cap?

4 A "Market cap" typically is a term used to describe
5 a public company. I don't know honestly. I would -- I
6 don't -- I've never thought about it that way, so --

7 Q Sure. Okay. And when you invest in companies, do
8 they -- do they tend -- you know, after you've made the
9 investment, is it generally the plan that they have enough
10 money at that point to sort of get to market and become a
11 public company?

12 A No.

13 Q What -- what are you -- what -- so, if that's not
14 it, at what stage does a company tend to be when you --
15 after you've made the investment?

16 A Well, the vast majority of our investments are
17 Series A or Series B investments. And, as a consequence,
18 when we make a Series A investment, typically, we expect
19 that the company is going to need to go raise money for,
20 say, a Series B and possibly a Series C depending on the --
21 the capital needs of the company and -- and other factors.

22 Q And if, in the future, they can't raise more
23 money, what happens to those companies generally?

24 A Typically, when the company can't raise more money
25 or chooses another option, it's sold.

Page 17

1 Q So when you -- once you've made the, say, a Series
2 A investment, the company has a certain runway ahead of
3 them?

4 A Correct.

5 Q And what does -- in that context, what's "runway"
6 mean for that?

7 A Runway means the amount of cash in the bank times
8 the monthly burn rate of the company.

9 Q So it's how -- how much more time the company has
10 --

11 A Before --

12 Q -- using --

13 A Before it needs to raise additional capital.

14 Q And --

15 MR. FONDO: You've got to let him -- let him
16 finish the question.

17 THE WITNESS: Yeah. Sorry.

18 BY MR. MITCHELL:

19 Q And if it can't raise additional capital, then,
20 generally, what do companies have to do at that point?

21 A There are a number of potential options that can
22 occur at that point. Companies do what's called pivot,
23 which -- they move to a different market. That's pretty
24 common. And then it's also very common that the company is
25 sold. And, occasionally, the company is shut down.

Page 18

1 Q Sorry. If a company is at the end of the runway,
2 if they don't have any more money, can they pivot?

3 A Yes.

4 Q How?

5 A They simply determine that there's another
6 marketplace that's adjacent to the one that they're in that
7 they can go and -- and prosecute.

8 Q And how do they do that if they don't have any
9 money?

10 A There are a number of different ways that people
11 can do it. I mean, I've seen it before with young groups of
12 entrepreneurs that they'll work for free for a period of
13 time to try to get that done. But, often, what they're able
14 to do is raise money for the new path, the new strategy.

15 Q So Kik -- at some point, Foundation invested in
16 Kik?

17 A Correct.

18 Q Did you take on a role at Kik at that time?

19 A I did. I did. I took on the role as a board
20 member and the representative for Foundation on the board of
21 Kik.

22 Q And what -- sorry. Apologies.
23 Roughly what time is that? What year is that?

24 A I'd have to -- I'd have to look at the specific
25 date. I think it's roughly -- actually, I'd literally have

Page 20

1 A I'm not -- I'm not exactly sure. Can you rephrase
2 that because I'm not exactly sure how to answer that. The
3 board doesn't run the company. It's just not how it works,
4 but --

5 Q Sorry. Who runs the company?

6 A The management team runs the company, and then the
7 board advises the company.

8 Q So who at Kik would be that -- part of that -- the
9 management team that runs the company?

10 A Ted Livingston is the CEO of Kik.

11 Q And is there anybody else who you consider sort of
12 part of the management team that's actually -- you know, the
13 top management that's running the company?

14 A Well, there are several other people that have
15 been involved in top management of the company. Ted is the
16 constant.

17 Q So then I understand about running the company.
18 Does the board -- has -- while you've been --
19 worked
20 on Kik's board, has the board, at times, sort of made
21 decisions like voted on things, and -- or issued resolutions
22 or in any other way sort of made a decision for the company?

23 A I'm not comfortable with the "made a decision for
24 the company" language because that's just not the way I
25 think about how boards work so --

Page 19

1 to look -- 2010, 2011. I don't -- yeah. Sorry.

2 BY MR. MURTHA:

3 Q Under what circumstances did you first meet Kik or
4 its executives?

5 A The introduction came through Sam Spadafora, our
6 former CEO from one of our earlier companies. He was
7 already working with the company, and I was introduced to
8 them as a potential investor in the company.

9 Q You met with him in person, or you just met him in
10 e-mail, or how did that go down?

11 A I met with him in person.

12 BY MR. MITCHELL:

13 Q At Kik, what's the board's -- what power does the
14 board have in terms of Kik's -- running Kik's business?

15 A So the board typically meets with management on a
16 periodic basis and hears a report from management of
17 progress being made toward the company's goals.

18 And the board of Kik or any other board frankly is
19 involved in things like helping to hire executives to come
20 onboard, helping to introduce them to new business
21 development relationships, helping them with financings,
22 whatever it may happen to be.

23 Q Does the board make decisions on its own?
24 I mean, does the board make decisions for the
25 company?

Page 21

1 Q Sure.

2 A Do you want to rephrase that? Or you -- what
3 should I -- how should I --

4 Q Oh, no. That's fine. No --

5 A I don't really know how to answer that so --

6 Q Sorry. You're --

7 A Yeah, yeah.

8 Q Just to be serious --

9 A Okay.

10 Q -- you're completely answering it.

11 A Yeah, yeah.

12 Q I'll just come up with an -- I'll ask another
13 question.

14 A Okay. Yeah. Sorry. I just don't --

15 Q It's no problem at all.

16 A I just don't know if it's -- yeah. Right.

17 Q Yeah, yeah. No. It's not a problem at all. It's
18 great. I can come up with another question.

19 A Yeah.

20 Q So the board is advising -- in your time working
21 at Kik, the board has advised management, but management has
22 actually run the company?

23 A Correct.

24 Q And management has made the decisions about what
25 the company will do and how it will operate?

Page 22

1 A Management proposes strategies and plans, and then
2 the board advises on those strategies and plans.

3 Q Okay. And who decides whether those strategies
4 and plans actually happen in the real world?

5 A If it's a significant enough strategy or plan,
6 then there's a vote of the board.

7 Q Why is there a vote of the board?

8 A Because that's just how boards work.

9 Q Okay. What's the importance of the vote of the
10 board?

11 A To indicate the -- the opinions of the individual
12 board members representing their various entities on that
13 strategy.

14 Q And who decides, though, whether Kik implements
15 that strategy?

16 A Well, the -- the board votes on the strategy, and
17 then the assumption is that the management will then
18 implement the strategy.

19 Q In your time at Kik, have you dealt with lawyers
20 from the law firm of Cooley?

21 A Yes.

22 Q Have you dealt with lawyers from the law firm
23 called Blakes?

24 A I don't recall Blakes specifically but Cooley for
25 sure.

Page 24

1 Q And just -- I mean, again, we're going to -- the
2 lawyers are going eventually, at some point, have some
3 conversations about this. This is all just very routine.
4 We're going to ask the questions. If I ask a question that
5 he's going to -- that -- so if I ask a question -- look, I'm
6 going to give you both different things.

7 A Yeah.

8 Q Mr. Holland, if I ask you a question and, in your
9 head, the answer is, Oh, a lawyer told me this, whether
10 that's your lawyer from the company or from Cooley or from
11 some other law firm we haven't talked about yet, just
12 mentally raise your hand, and then you can talk to them
13 about that.

14 A Sure.

15 Q And we can figure it out. It's not -- this is
16 routine. We do it all the time.

17 A Right.

18 Q We're going to ask the questions. And if we get
19 to that point and then you say, you know, Look, our
20 perception is that it's -- that that's -- what it's -- the
21 answer would -- the privilege, we're just going to have you
22 put it on the record and move on. We're not going to -- we
23 totally get it.

24 Okay. During the time you've been on the
25 board, who have been the key board members? Who's involved

Page 23

1 Q Blakes is a Canadian law firm. Does that ring a
2 bell?

3 Have you dealt with any Canadian lawyers?

4 A I don't recall dealing with Canadian lawyers.

5 Q Other than Cooley, did you deal with any other
6 lawyers in connection with the Kin token offering that --
7 that we're here to talk about?

8 A Cooley is the only attorney that I recall dealing
9 with on the token offering.

10 MR. FONDO: So, Brian, maybe this is the time for
11 me to jump in on when things -- because you may be, at
12 some point later, getting into it.

13 Just so it's clear, we're not intending to waive
14 any privileges today. In fact, we're going to do our
15 best not to. But also, I'm not sure that it's Paul's to
16 waive at this point. It's a company -- I think what
17 you're mostly going to be getting -- the vast majority
18 of what you might be getting into is company
19 privileges.

20 And so -- so it's not his intention to waive that.
21 I'm not sure he could waive it anyways, but we just
22 wanted to
23 be clear.

24 MR. MITCHELL: Sure. Absolutely clear.

25 BY MR. MITCHELL:

Page 25

1 -- who's -- who's been the most involved in the -- in the --
2 in, you know, dealing with Kik or in Kik's -- helping the
3 Kik business?

4 A The key board members would be Ted Livingston, the
5 CEO; Fred Wilson from Union Square Ventures; Jim Estill, who
6 is a local Canadian CEO who helps advise our young CEO at
7 the company; and myself. And I'm -- we have other -- we
8 have observers. That's a concept also. And I -- but I --
9 as far as the main board members, those are the main board
10 members.

11 Q You said Mr. Estill advises Mr. Livingston. How
12 does that happen?

13 A He's a -- he's a -- he's a CEO that's
14 approximately my age. And Ted started the company when he
15 was 23. So there's just some wisdom, for lack of a better
16 way to describe it, about how to run a company type of
17 thing.

18 Q Sure.

19 A Anyway --

20 Q In a similar vein, what's -- what -- sort of what
21 do you see yourself -- where have you provided advice for
22 the company? What kinds of subjects or areas?

23 A The -- so I invested in the company when it was a
24 messaging service targeted at middle school and teenagers.
25 At the time, I had three daughters in middle school. I now

Page 26

1 have three older daughters. And so my advice was often
 2 around the marketplace that they were going into.

3 Q And what about Mr. Wilson?

4 A Mr. Wilson is similar in a sense except Mr. Wilson
 5 has much broader experience, has been an investor in some
 6 very notable companies with messaging-related backgrounds.

7 Q And then the board meets several times a year?

8 A Yes.

9 Q Sometimes by phone?

10 A Yes.

11 Q And sometimes in person?

12 A Yes.

13 Q And before the meetings generally, do you receive,
 14 like, a board deck from someone?

15 A We will typically receive an agenda and then, at
 16 -- at various times, receive the deck.

17 And that's true of almost any board. Sometimes
 18 you get it 48 hours in advance, lots of time to look at it.
 19 Sometimes you get it 14 minutes in advance. That's not a
 20 function of Kik.

21 Q Sure. Who sends you the board decks?

22 A Typically, the CEO or CFO of our companies are the
 23 -- typically the people we get the board decks from.

24 Q And at Kik, who -- who writes the board decks?

25 A I don't know the specific answer to that.

Page 27

1 Q Okay. Who --

2 A Management is responsible for creating the board
 3 decks.

4 Q Does -- do you -- at Kik, do you get them from the
 5 CEO or the -- who -- I guess who do you get them from when
 6 -- specifically for Kik?

7 A I -- I'd literally have to go back and look at the
 8 header from the e-mail of the person who sends it in.

9 Typically, we get the -- our board decks from CEOs and CFOs
 10 because they're the ones most directly involved.

11 MR. FONDO: So, Paul, when he's asking you a
 12 question, if you know the answer --

13 THE WITNESS: Yeah.

14 MR. FONDO: -- then answer it. But otherwise --

15 THE WITNESS: Okay.

16 MR. FONDO: -- say that you just don't remember.

17 THE WITNESS: Okay. Yeah, yeah.

18 BY MR. MITCHELL:

19 Q So can you sort of just -- what -- what's the
 20 story of -- of your investment in Kik? Sort of how -- how
 21 has it done over time?

22 A So when we made the original investment in Kik, we
 23 led the Series B of the company. And, at that time, the
 24 insight that Ted Livingston had -- so Ted was an intern at
 25 BlackBerry. And while he was an intern at BlackBerry, he

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1 discovered, because of his own personal needs and the needs
 2 of his co-board, which are a group that we called mobile
 3 natives or digital natives, that millennial group, that
 4 there was a need for what is now known as a cross-platform
 5 messenger.

6 At the time, BlackBerry existed -- and I'm sorry
 7 if
 8 these are just terms of art. But BlackBerry exists in
 9 what's called a walled garden.

10 Q Sure.

11 A And so as an intern at BlackBerry, he decided we
 12 needed a way to be able to communicate with other devices
 13 and other platforms. And so he created what is known as one
 14 of the first cross-platform messenger, basically, concepts
 15 and then spun out and formed Kik around that.

16 And I don't -- actually, to be fair, I don't --
 17 the
 18 sequence of that is a little unclear to me because I wasn't
 19 there at the time. But that's the general story.

20 Q But when you arrived, that was sort of the story
 21 of the company?

22 A It was -- the company was incorporated as Kik, and
 23 it was doing a cross-platform messenger targeted towards
 24 teens, middle school and teens.

25 Q And so when you invested in the Series B, after

Page 29

1 that point, how did -- how did -- how did Kik do?

2 A The company grew quite rapidly going from the
 3 inception into kind of the Series B time period and a little
 4 past that in terms of when we came onboard. I don't recall
 5 the exact numbers but it was something like 0 to 23 million
 6 users pretty quickly.

7 And -- and so that continued for a while. And
 8 then
 9 we began to see our usage start to ebb off and -- and some
 10 degradation of those numbers.

11 Q What does that mean?

12 A That the -- that the platform was not growing as
 13 rapidly as it had. And that was what we began to see.

14 Q And was that important?

15 A Yes, it's important.

16 Q Why?

17 A The size and scale of the platform would
 18 ultimately have an indication of the value of the business.

19 Q And so, at some point, the -- Kik's -- the --
 20 there was this degradation you just described?

21 A Right.

22 Q Was Kik -- had -- did that continue?

23 A Over a relatively long period of time, the
 24 degradation continued. But it was not, like, blindly
 25 obvious, right? Because the entire marketplace was

Page 30

1 continuing to grow.

2 Q Sorry. The entire marketplace is the Kik -- is
3 Kik --

4 A For -- for messaging.

5 Q Oh.

6 A So just recall this is before Snapchat and as
7 WhatsApp was kind of blowing up around the world.

8 Q So, at one point, this was sort of a peer to
9 WhatsApp and Snapchat?

10 A It was a predecessor to Snapchat.

11 MR. SCHLEGELMILCH: Brian, can I ask a quick --
12 quick question?

13 BY MR. SCHLEGELMILCH:

14 Q How does Kik make money? And let's start during,
15 like, the first period of your investment, 2010, 2011. How
16 does Kik produce revenue?

17 A There was no revenue.

18 Q And has -- has that changed over time? Does Kik
19 currently receive revenue?

20 A No. Not -- not -- it has not created appreciable
21 revenue.

22 Q Okay. Is that a problem? Like, is that -- it
23 seems like -- like, at some point, they're just going to run
24 out of money if there's no money coming in.

25 A You're asking an existential question --

Page 32

1 A I'd have to go back and look at the dates

2 associated with the timing, but some years after we made the
3 investment.

4 Q And so let me -- let me try to take you -- focus,
5 say, 2016.

6 A Sure.

7 Q By that point, was -- by the middle of 2016, was
8 the degradation and the lack of revenues a problem?

9 A The -- the degradation of users was -- was
10 unwelcome. And the lack of revenue was unwelcome at the
11 same time.

12 But I just want to make sure it's clear, the --
13 the

14 majority of the companies who had exited at that point had
15 exited with no revenue.

16 Q And "exited" in your business is a very successful
17 word?

18 A Well, not necessarily.

19 Q Oh.

20 A But -- but yes. They had -- for the most part,
21 messaging platforms had been sold.

22 Q Right. And --

23 A And so that was the common path.

24 Q So that even without revenue, you could have
25 value?

Page 31

1 Q I am.

2 A -- as it relates to the messaging marketplace. If
3 we want to have that conversation, we can, but that's not
4 specific to Kik.

5 Q Gotcha. Okay, okay. Thank you.

6 BY MR. MITCHELL:

7 Q Was the deterioration and the lack of revenue a
8 problem in terms of Foundation Capital's investment in Kik?

9 A Initially, the lack of revenue was not. That was
10 actually the strategy. Initially, it was to just simply
11 build users.

12 Q That's in the first --

13 A That was in the first incarnation, the first
14 phases of the company. And then, over time, the expectation
15 was to generate revenue.

16 Q Did that expectation come true?

17 A It did not.

18 Q Was there a time that you sort of -- that you --
19 sorry.

20 Was there a time that this -- that you thought
21 that

22 this degradation and lack of revenue was a problem?

23 A Eventually, it became -- it became a concern. It
24 was not initially.

25 Q Roughly, when did it become a concern?

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1 A WhatsApp had effectively no revenue --

2 Q Right.

3 A -- when it was bought for multiple billions of
4 dollars by Facebook.

5 Q Right. Okay.

6 A It had -- it had a tiny bit of revenue relative to
7 the value.

8 BY MR. MURTHA:

9 Q So you sort of referred earlier to the existential
10 question of, you know, whether or not messaging, you know --
11 or just the theory that messaging apps don't -- generally
12 don't make money. So why invest in one?

13 A The expectation over time is that they have the
14 potential to make a lot of money. So for the same reason
15 that someone invested in Snapchat is the same reason I
16 invested in Kik, is that we expected over time to be able to
17 build a platform that would be attract advertisers and
18 gaming platforms and things like that at scale. And then --
19 and then you can generate revenue and ultimately value.

20 BY MR. SCHLEGELMILCH:

21 Q Or -- and I'm -- this is a question -- or to have
22 it be acquired by a larger company within -- like Facebook
23 to be folded into a company with a revenue model?

24 A Correct.

25 BY MR. MITCHELL:

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1 Q I'm sort of picking -- middle of 2016, how did you
2 think Kik was doing?

3 A That's -- I'd have to literally be looking at
4 board books to answer that question because I just don't
5 know exactly what's happening middle of '16 versus early
6 '16, late '16. It's -- it's a -- that's a hard one to kind
7 of put my finger on.

8 Q Sure. Over the last three -- over the last 3 1/2
9 years, 4 years --

10 A Right.

11 Q -- has Foundation set a value of what it thinks
12 its investment was worth?

13 A Yes.

14 Q During that time, did its -- did its stock
15 ownership -- like, did what its -- what Foundation Capital
16 owned change?

17 A No.

18 Q So -- so to the extent that the value -- to the
19 extent that Foundation saw its -- the value of its
20 investment changing, it was just because of the value of
21 Kik, not because it had bought more or sold some of its
22 shares?

23 A Yes.

24 Q I'm just going to give you -- because I don't want
25 to --

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1 strike that.

2 Does this refresh your recollection about how
3 Foundation Capital valued its investment in Kik?

4 A Yes.

5 Q Okay. So over, say, the last 3 years -- or 3 1/2
6 years, how has -- how has Foundation Capital's view of its
7 Kik investment changed?

8 A The value of the Kik investment has dropped.

9 BY MR. SCHLEGELMILCH:

10 Q This speaks to enterprise value. Is that a term
11 that you're familiar with?

12 A Yes.

13 Q Generally, in sort of a 50,000-foot view, what
14 does enterprise value mean?

15 A At a 50,000-foot view, you could have a company
16 that has \$200 million in cash on the balance sheet, and the
17 company gets sold for 300 million. So the enterprise value
18 would be 100 million. Does that make sense?

19 Q Yes, it does make sense.

20 A All right.

21 Q Thank you.

22 BY MR. MITCHELL:

23 Q Why did Foundation Capital change its view of the
24 value -- the enterprise value of its investment?

25 A The performance metrics of the company were

Page 35

1 A Yeah.

2 Q I don't mean this to be a test. I'm going to give
3 you what's been marked as Exhibit 43.

4 (SEC Exhibit No. 43 was marked for
5 identification.)

6 BY MR. MITCHELL:

7 Q Exhibit 43 is a letter -- is a letter -- it's --
8 it's a Goodwin Procter letter. And it's just purely -- I'm
9 giving this to you -- well, sorry. Have -- let me ask a
10 question.

11 Do you recognize this document?

12 A I do.

13 Q Is this a Goodwin Procter letter to me?

14 A Yes, it is.

15 Q Okay. From June 12th, 2018?

16 A Yes.

17 Q I'm not asking you about your conversations with
18 them. I'm just sort of trying to make this super efficient.

19 A Yeah.

20 Q Were you involved in drafting this letter?

21 A I was not.

22 Q Okay. Do you see -- there are a couple bullets on
23 the first page that describe the value. Does this refresh
24 your -- what I would call refresh your recollection as to
25 what -- how Foundation value -- how Foundation value --

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1 degrading.

2 Q And what -- what were -- what are the important
3 metrics?

4 A Users, daily active users, monthly active users
5 were declining.

6 Q Sorry. Daily active users is DAU sometimes?

7 A DAUs.

8 Q And MAU --

9 A MAU is for monthly active users. Yes.

10 Q Okay. I'm going to take back Exhibit 43 from you.
11 I'm just going to put these in the center of the table.

12 So, at some point in 2016, did Kik try to
13 find someone to buy the company?

14 A Yes.

15 Q What happened?

16 A We hired Credit Suisse as an investment banker to
17 represent the company to potential acquirers or potential
18 merger candidates.

19 Credit Suisse ran a process and, in the course of
20 that process, spoke to a number of acquirers. And at the --
21 as we approached the end of that process, we didn't have a
22 buyer.

23 Q Why did Kik start that process?

24 A Because the -- when you invest in a company, you
25 believe you're either going to take the company public, or

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1 you're going to end up having the company acquired in one
2 form or another. At least that was prior to the current
3 state of things.

4 So -- and so as a consequence at that point, it
5 was -- we didn't think we had a realistic path to go public.
6 Snapchat was already going out, and they had already kind of
7 established the benchmark around that. And so we thought
8 that the best -- the most prudent thing to do for the
9 company was to pursue an acquisition.

10 Q All right. Sorry. Did Snap -- why -- sorry.
11 Did Snapchat's IPO suggest to Kik that Kik
12 couldn't
13 IPO?

14 A No. It just simply suggested that they were --
15 they had -- they were far in the lead.

16 Q Far in the lead.

17 A Yeah.

18 Q So -- I'm sorry. Why didn't you have a -- I
19 apologize. I'm going to paraphrase it.

20 Why did -- why did -- why did you think that Kik
21 didn't have a route to an IPO at that time?

22 A Because our metrics were not going in the right
23 direction. We -- our DAUs and MAUs were declining.

24 Q And that contrasted to Snapchat at the time?

25 A Correct.

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1 Q And what -- what kind of -- what -- when you --
2 when were talking to -- when Kik and -- and Credit Suisse
3 were talking about potential buyers, what -- what did you
4 think would -- who did you think might be interested in Kik
5 at that time in 2016 when -- when Credit Suisse started the
6 process?

7 A There were a number of possible buyers, social
8 platforms, older kind of internet portal companies, ALA,
9 Yahoo, companies like that, and even old-line media
10 companies that were trying to find a way into the middle
11 school and teen digital audience.

12 Q And so what -- what did -- what did you learn from
13 the Credit Suisse process in terms of whether there was a
14 buyer or whether people were interested?

15 A We didn't have a buyer at -- at any point during
16 the process.

17 Q Did Kik get an offer?

18 A Not that I'm aware of.

19 Q Okay. So it's not -- it's not that somebody
20 offered money but it wasn't enough?

21 A Correct.

22 Q So where -- where did you see Kik -- so, in end of
23 2016, Credit Suisse is finishing this process. Where did
24 you see Kik at -- at that point? What was -- what -- where
25 did you see Kik, and where did you see it going?

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1 A I saw Kik at a point where it was going to have to
2 make a choice about what it was going to do, whether to cut
3 back and kind of hunker down and wait out the acquisition
4 process, or whether to pivot toward another market.

5 Q Okay. So I just want to -- so that's two options?
6 You saw two options?

7 A Effectively. I mean, the third option is we would
8 end up shutting down, but, you know.

9 Q Okay. So let me take all three.

10 A Right.

11 Q The -- so the first option would be to cut costs
12 and try to extend the runway?

13 A Correct. Actually, I shouldn't -- you're just
14 going in numerical order.

15 Q Oh, I'm sorry. Yeah.

16 A It's not first option, second option. It's just
17 yes.

18 Q Fine. There are three options.

19 A Option alpha is this one.

20 Q Sounds fine. So that's what that one would be.

21 The -- another option would have been to pivot?

22 A (Witness nods.)

23 Q Did you discuss that with anyone at Kik?

24 A There were discussions between the board and our
25 attorney around all of the strategic options of the company,

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1 so those were -- those were a part of the dialogue.

2 Q And, again, I'm just going to flag again.

3 A Yeah.

4 Q To the extent that I ask you a question that is
5 going to pop out what a lawyer said or what you said to a
6 lawyer, just make sure that Grant understands.

7 A Sure enough.

8 Q We'll figure it out.

9 What was -- what was the -- what was the
10 pivot that -- or pivots that you guys discussed?

11 A The primary pivot was around the notion of
12 creating a new community around Kin, a new basically digital
13 community that would have its own token, its own offerings,
14 its own capabilities with Kik as effectively the
15 infrastructure or the backplane of the new community.

16 Q All right. We're going to talk more about that in
17 a little while.

18 Were there any other pivots that the board
19 discussed with the company?

20 A I don't recall any at the moment.

21 Q And were there discussions around shutting the
22 company down?

23 A Not appreciably because we still had cash, and we
24 still had a management team that was motivated to try to
25 make something happen, so --

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1 Q So, now, I want to sort of turn to the -- to the
2 idea of -- the Kin idea that you were talking about.
3 When -- when the idea originally came up, were
4 people using the word "Kin" initially?
5 A I don't recall how the terminology was rated at
6 that time.
7 Q Okay.
8 A But "Kin" became known as the term.
9 Q Sounds great. What is Kin?
10 A Kin is a new community that would allow people to
11 essentially transact commerce, participate in gaming,
12 stickers, Bitmoji-type interactions, so basically a digital
13 community. And that digital community would be made
14 possible effectively by the -- by the fact that Kik would --
15 would have its backplane -- its messaging backplane and
16 infrastructure available to the community.
17 So that's the notion. Kin is a new community, a
18 new
19 digital community.
20 Q And was that the notion from the start?
21 A As far as I recall.
22 Q And was the notion from the start that Kik would
23 use its messaging app as the backplane of the new community?
24 A I use that terminology. I think you should ask
25 the Kik management and technologists because that's not me,

Page 43

1 so --
2 Q Sure. What did you understand that -- but what
3 did you understand at the time?
4 Did you -- when this idea first came up, did you
5 understand that Kik's app would be important to the -- this
6 new community?
7 A I'm not exactly sure how to answer that, so --
8 MR. FONDO: Do you want to talk for a second?
9 THE WITNESS: Yeah, yeah.
10 MR. MITCHEL: Sure.
11 THE WITNESS: Because I don't know --
12 MR. MITCHELL: We're going to go off the record.
13 THE WITNESS: Yep.
14 THE VIDEOGRAPHER: Going off the record. The time
15 is now 10:32 a.m.
16 (Recess.)
17 THE VIDEOGRAPHER: We are back on the record. The
18 time on the monitor is 10:40 a.m.
19 BY MR. MITCHELL:
20 Q Sorry. I'm going to ask you a logistical,
21 bureaucratic question.
22 During the -- Mr. Holland, during the break, did
23 you
24 have any substantive conversations with the Staff about the
25 case?

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1 A No, I did not.
2 Q Okay. So I'll just repeat the question. At the
3 time that this Kin idea first arose, did you
4 understand that the Kik app would be important to the pivot?
5 A At the time that the Kin idea arose, I had almost
6 no concept of what an internet currency offering was going
7 to be or what the community would look like later.
8 I have come to learn more over time, and I've come
9 to understand that there would be capabilities that would be
10 part of the Kik infrastructure that could be available to
11 the Kin Community. So, at the time, I didn't have that
12 understanding.
13 Q Okay. So when the idea was first brought up to
14 you -- oh, sorry.
15 Roughly, do you remember when this idea was --
16 what
17 year? Whether it was 2016? 2017?
18 A Roughly 2016.
19 Q Okay. So was there a point at which the board --
20 where you -- where the board first discussed the -- the idea
21 with management?
22 A There was a point at which it was a board agenda
23 item to discuss the idea. And so the board and our attorney
24 discussed the idea.
25 Q Okay. And so before that point, how -- how long

Page 45

1 had the idea been bouncing around before that board --
2 before the first board agenda item?
3 MR. FONDO: Idea bouncing around where?
4 MR. MITCHELL: Among people, the people -- sorry.
5 BY MR. MITCHELL:
6 Q Before the -- how long -- how long before this
7 board agenda item had this idea of the pivot to a token or a
8 digital -- some kind of pivot -- how long had it been --
9 people been discussing it?
10 A Okay. So that's -- that's hard to answer
11 specifically. I'll try to give you a sense of how I think
12 about this.
13 Q Sure.
14 A The community of technologists of roughly Ted's
15 vintage have been talking about digital currencies for a
16 long time. And so he's no different, I think, from that
17 perspective.
18 There was a point at which it became more of a
19 discussion of the board at Kik as to whether that was a path
20 to go down.
21 I can't recall or delineate kind of when that
22 general discussion among millennial technologists around
23 digital currencies then sort of morphed over into a more
24 formal discussion of the -- of -- of Kik.
25 Q But there was a point where the board had an

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1 agenda item to talk about it?

2 A Correct.

3 Q Do you remember when that was?

4 A I don't recall specifically.

5 Q Okay. So I'm going to -- I'll refresh your

6 recollection. I'm going to give you what's been previously

7 marked as Exhibit 13B.

8 Exhibit 13B is a multipage document. It has a

9 Bates

10 number of KIK_FOUNDATION_CAP_00572 to 5803. And, on its

11 face, it -- it is -- it has the e-mail that's Ted Livingston

12 -- from Ted Livingston dated February 1st, 2017. Whoops.

13 MR. FONDO: Let me just point for the -- actually,

14 at least the copy we have has a lot of un-Bates labeled

15 pages.

16 MR. MITCHELL: Sorry.

17 BY MR. MITCHELL:

18 Q I'm actually going to also give you what's been

19 marked as Exhibit 12B.

20 MR. FONDO: I guess -- sorry. I stand corrected.

21 My apologies.

22 MR. MITCHELL: That's all right.

23 BY MR. MITCHELL:

24 Q So I've now given you 13B and 12B. And 12B is

25 also a multipage -- multipage document with the Bates Nos.

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1 KIK_FOUNDATION_CAP_005705 to 5770. And it is also an e-mail

2 from -- on the face, the first page is an e-mail from Ted

3 Livingston dated January 27th, 2017.

4 A Okay.

5 Q Do you see Exhibit 12?

6 A I do.

7 Q Okay. I was looking to -- the first question that

8 I wanted to ask was, does this refresh your recollection

9 about when the board first had an agenda item about the --

10 about this pivot?

11 A Are you pointing me to something specific? I'm

12 only looking at the cover page.

13 Q Sure.

14 A So are you pointing to me something specifically

15 here?

16 Q Yeah. Can you look -- look at page 12. Look at

17 the bottom of the page that has 5799 at the end of the --

18 what we call the Bates number at the end.

19 Which one are you looking at? Sorry. Look

20 at 13B.

21 MR. FONDO: 13B?

22 THE WITNESS: 13B, 5799.

23 BY MR. MURTHA:

24 Q It's the third-to-the-last page.

25 A Okay.

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1 BY MR. MITCHELL:

2 Q So I'm in, again, Exhibit 13B.

3 A Yeah.

4 Q Bates -- it's the page that ends in the Bates

5 number of 5799. It says, "Put Together a Crypto Currency

6 Plan."

7 A Yes. I see that.

8 Q Is this the -- you can look at the next page. Do

9 you see that it says, "Create a Go to Market and Resourcing

10 Plan to Become the Crypto Currency Messenger"?

11 A I see that.

12 Q Okay. Is this the agenda item you were

13 discussing?

14 A I don't know whether it's this specific agenda

15 item or whether it was another agenda item as part of the

16 discussion of the strategic choices. I recognize this as an

17 agenda item from one of the Kik board decks, but I don't

18 know if this is the first one that I saw.

19 Q Okay. Well, let me just -- let me just do some

20 housekeeping first.

21 Can you look at Exhibit 12B.

22 A Yeah.

23 Q Take as -- take what you need.

24 Do you -- my question is going to be, do you --

25 review it, take a look at it --

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1 A Okay.

2 Q -- and then my first question is going to be, do

3 you recognize this document?

4 A I recognize this as a Kik board deck.

5 Q And is the first page an e-mail that Ted

6 Livingston sent?

7 A It is. The first page of this exhibit is an e-

8 mail from Ted Livingston marked --

9 Q And do you see --

10 A -- 1-27-2017.

11 Q And do you see that it has a "to" line of Kik

12 Board and then [Board@kik.com]?

13 A Yes.

14 Q What's -- who gets e-mails -- as far as you

15 understand, who gets e-mails when they're sent to

16 Board@kik.com?

17 A The board members of Kik.

18 Q Did you -- did you routinely receive e-mails that

19 were addressed to Board@kik.com personally?

20 A Yes, I did.

21 Q So the first page, is this -- this is an e-mail

22 Mr. Livingston sent you?

23 A This is an e-mail that Mr. Livingston sent to the

24 Kik board. My operating assumption is I would've gotten

25 this like I would've gotten the other board e-mails.

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1 Q That's great. And then is the rest of the
2 document an -- an attachment to that e-mail?

3 A The rest of this document is an attachment to this
4 e-mail.

5 Q And that's the board deck that we were discussing?

6 A It's the board deck from this date.

7 MR. FONDO: So just -- just so the record is
8 clear, are you saying -- when you answered the question
9 "yes," are you saying it's attached because it's
10 stapled or because you have a recollection --

11 THE WITNESS: I'm saying it's attached because
12 it's stapled together. I don't -- I don't -- I mean, I
13 --

14 BY MR. MITCHELL:

15 Q Okay. Were you involved in -- did you ever see a
16 subpoena that the SEC served on Foundation Capital?

17 A I saw the subpoena document that was just here a
18 moment ago. I don't recall whether there was a different
19 one.

20 Q Okay.

21 BY MR. MURTHA:

22 Q Do you have any reason to believe that the board
23 deck attached to this e-mail was not actually attached to
24 this e-mail when you received it?

25 A I have no reason to believe that.

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1 MR. FONDO: Can we go off the record for a second?

2 MR. MITCHELL: Sure. We'll go off the record.

3 THE VIDEOGRAPHER: Going off the record. The time
4 on the monitor is 10:48 a.m.

5 (Discussion off the record.)

6 THE VIDEOGRAPHER: We're back on the record. The
7 time is 10:49 a.m.

8 BY MR. MITCHELL:

9 Q I'm going to ask you the same logistical question.

10 A Right.

11 Q Mr. Holland, during the break, did you have any
12 substantive conversation about the case with the Staff?

13 A No.

14 Q So which -- are you holding Exhibit 12B?

15 A 12B.

16 Q Do you have any reason to think that you didn't
17 get this e-mail and the attachment?

18 A I have no reason to believe that I didn't get the
19 e-mail and attachment.

20 Q What about Exhibit 13B? Do you have any reason to
21 think -- sorry.

22 What is Exhibit 13B?

23 A I have Exhibit 13B. And I -- I don't have any
24 reason to believe that I wouldn't have gotten this, so --

25 Q Okay. So these are -- the first e-mail is from

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1 January 27th, 2017. Second is February 1st, 2017. Was
2 there a board meeting on or about February 1st, 2017?

3 A I don't recall the specific dates and times of the
4 board meeting. I am looking at the document here, and this,
5 I believe, would refresh my memory based on the document.

6 Q Okay.

7 MR. FONDO: And when you say refresh your memory
8 based on the document, does that mean you're reading the
9 document or you have an independent recollection of --

10 THE WITNESS: I don't have an independent
11 recollection of the date of every board meeting. I am
12 looking at the document here, and I don't have any reason to
13 challenge that this would be the date.

14 MR. MITCHELL: Sure.

15 MR. SCHLEGELMILCH: Can I ask a quick question?

16 MR. MITCHELL: Sure.

17 BY MR. SCHLEGELMILCH:

18 Q So in 2017, you were on the Kik board, right?

19 A Right.

20 Q And you were not a -- you were a voting member,
21 not an observer on the board?

22 A Correct.

23 Q How many times during 2017 -- you can provide --
24 if you provide a specific number of times, that's great. If
25 you can provide an approximate number of times, I'll take

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1 what I can get.

2 How many times did the board meet in person?

3 A I don't recall the number of times we met in
4 person versus video meetings or phone meetings.

5 Q Okay. Did you meet every month?

6 A Not in person, we didn't meet every month.

7 Q Okay. Did you meet in person, let's say, once a
8 quarter?

9 A Often, over the history of time with Kik, we met
10 once a quarter in person. I don't recall for 2017 whether
11 that was the case.

12 Q Okay. And how many -- so can you provide me a
13 ballpark for how many times you got together in person with
14 the board in 2017 where -- where you had a quorum, and you
15 can vote, and you can approve things, and you can do the
16 things that a board does? Just a ballpark. Best guess.

17 A In person, I would say two to four times. But --

18 Q Okay.

19 A -- I just -- I don't know the exact number.

20 Q Okay, okay. And let's try then -- I think you
21 said that you also did some video conferencing?

22 A We did board calls and also board videos. And
23 sometimes people were on the phone, and sometimes people
24 were on video.

25 Q Okay. About how many times did that happen?

Page 54

1 A More often than the face-to-face.

2 Q How many boards were you on in 2017?

3 And let's start with, like, full voting member.

4 A Approximately seven or eight. I'd have to go back

5 and look.

6 Q Okay. Can you identify for us today the boards

7 that you sat on as a full voting member in 2017?

8 A I can identify some of them. I'd have to go back

9 and look at dates on some, when I rolled off, and -- and

10 when companies were sold, and things like that.

11 Q That would be great. Thank you.

12 A Okay.

13 Dave, I might have to get some help here.

14 So 2017 would have been on the board of

15 Peerspace; on the board of a company called Homesuite, which

16 is now called 2nd Address; would've been on the board of a

17 company called Skycure; at some point, would've been on the

18 board of a company called Respond and another called Maya,

19 and a company called InsideView. And I might have been

20 rolling off of other boards that were older that I was

21 selling at the time. I just don't recall exactly.

22 Q Okay. Now, my question was about a full voting

23 member. Were there other boards in which you were an

24 observer during the 2017 time period?

25 A I -- I don't recall. I had a board that I was an

Page 55

1 observer in, MobileIron, but by then, I had rolled off of

2 that board.

3 Q Okay. So --

4 A I don't recall whether I had another board that

5 had an observer role. I'm sorry.

6 Q Okay. But you -- so you recall, I think, seven or

7 eight, whatever you put on the record -- seven or eight

8 boards that you sat on as a voting member. But you don't

9 specifically recall any additional boards that you sat on as

10 an observer in 2017?

11 A I -- I recall another board that I was a voting

12 member on called DreamBox Learning. That's not a Foundation

13 Capital board.

14 Q Okay. But just -- just for my question, just to

15 close it out, you don't recall specifically any additional

16 boards other than the ones you've listed in which you were a

17 -- an observer member?

18 A I don't recall sitting here today.

19 Q Okay. Thank you.

20 BY MR. MITCHELL:

21 Q In this time period, end of January, early

22 February 2017, was Kik in a precarious position?

23 A Kik was in a position where they were pursuing an

24 acquisition and waiting to hear whether or not they were

25 going to get buyers, and also considering a change of

Page 56

1 strategy/a pivot. So it's -- the companies get more and

2 more stressful as the cash runway begins to contract, so it

3 was becoming more stressful.

4 Q What do you mean, getting more stressful?

5 A Just simply the process of -- of dealing with the

6 issues associated with the company. As you have less and

7 less cash to deal with, it's just more stressful.

8 Q For who?

9 A For the management and the board.

10 Q Can I just draw your attention to 12B.

11 A Yeah.

12 Q If you look at the second paragraph of the -- of

13 the e-mail, it says, "With no bids coming out of the process

14 and a continued decline in our metrics, we're in a

15 precarious position to say the least." Do you see where I

16 read that?

17 A I do. Yeah.

18 Q Did I read it correctly?

19 A Yes, you did.

20 Q Just looking to refresh, again, your recollection.

21 In this time period, was Kik still waiting for -- to hear if

22 there would be bids?

23 A Yes. Because you're always waiting to hear if

24 there will be bids.

25 Q Okay.

Page 57

1 A Yeah.

2 Q You mean that any company --

3 A That's right.

4 Q -- could get a bid --

5 A In a sale process, you can get a bid --

6 Q Sure.

7 A -- any time.

8 Q Other than that sort of background idea that a

9 company could get bought at any time, was the process -- at

10 this point, was Kik still -- where was Kik in this process

11 with Credit Suisse -- that Credit Suisse --

12 A Still no offers.

13 Q Still no offers?

14 A Right.

15 Q And so at this point, what were -- was -- did Kik

16 -- did Kik need to raise money?

17 A That would've been one of the paths, yeah, to

18 raise money.

19 Q What would be the other path?

20 A Sell the company, pivot on the existing capital.

21 Q Okay. And did -- did -- did Kik consider pivoting

22 on the existing capital?

23 A And I'm sorry. The other path would -- would be

24 to cut the runway -- I mean cut the -- cut the burn and

25 extend the runway.

Page 58

1 Q I see.

2 A Yeah.

3 Q Okay. So did Kik consider pivoting on its

4 existing capital?

5 A Yes.

6 Q To what business?

7 A To the Kin ecosystem. That was the notion at the

8 time. It was the beginning of that process.

9 Q So there was a point where the idea the Kin

10 ecosystem was we won't raise any more -- was that Kik

11 wouldn't raise any more capital?

12 A That's -- I would not phrase it that way.

13 Q Okay. So let me ask my question again.

14 Did Kik ever consider pivoting and using only its

15 existing capital?

16 A Not that I'm aware of.

17 Q And did Kik consider shutting down?

18 A Not that I'm aware of.

19 Q Did Kik consider cutting the burn -- cutting its

20 burn to extend the runway?

21 A Yes, it did.

22 Q And what -- what would it have -- when you were

23 discussing that option, what were -- what were -- what were

24 the ways you discussed to cut the burn?

25 A You would cut back on offices. You'd cut back on

Page 59

1 people. You'd cut back on the use of servers and the

2 expenses associated with using computer servers, some more

3 of the typical range of things you'd discuss to -- to cut

4 back on -- on the burn.

5 Q And was there a point at which Kik decided whether

6 it wanted to cut back on the burn?

7 A Can you rephrase that? Do you mean, like, was

8 there a point at which Kik had decided whether or not to go

9 down that path?

10 Q Yes.

11 A From that perspective, there was a point at which

12 that -- that decision had to be made.

13 Q And what was the -- so what was the decision made?

14 A The decision was made not to go down that path.

15 Q Okay. So then I think of the options we

16 discussed, fundraising is the other option. Raising money

17 is the other option?

18 A Actually, pivoting was really the other option.

19 And, as part of a pivot, a fundraising might occur, but --

20 Q Okay. So, again, was there ever a discussion of a

21 pivot where fundraising wouldn't occur?

22 A Not that I recall.

23 Q Can you look on Exhibit 12B. There's a page that

24 has a Bates number that ends in 5747. It actually has a

25 slide No. 42, and, at the top, it says, "Investment

Page 60

1 Alternatives."

2 MR. FONDO: Sorry, Brian. What page is that?

3 THE WITNESS: "Investment Alternatives."

4 MR. MITCHEL: Bates No. 5747.

5 THE WITNESS: 5747, "Investment Alternatives."

6 Yes.

7 BY MR. MITCHELL:

8 Q Do you see that page?

9 A Yes.

10 Q What is -- what -- what -- what are they -- what

11 did this mean by "crypto currency" at the bottom?

12 A This was a -- one of the paths of a strategic

13 pivot for the company.

14 Q A pivot with fundraising?

15 A Yes.

16 Q Okay. And were -- is -- so -- and are the other

17 four lines -- are those -- those are the other alternatives

18 that were being considered?

19 A For investment, yes.

20 Q Okay. And -- sorry. Let me just -- what does

21 "reengage strategics" mean?

22 A Just simply putting a -- you know, a new burst of

23 energy into the Credit Suisse process.

24 Q And did that -- sorry. Did Kik do that?

25 A My perception is that Kik maintained engagement

Page 61

1 with Credit Suisse through the end of the Credit Suisse

2 process. So I don't -- I think it's a semantic thing about

3 the "reengage."

4 Q Sure. Got it. But they -- did that ever lead to

5 any options for -- did that ever lead to an offer?

6 A We -- we did not get an offer.

7 Q Then "strategic investment banks," what does --

8 what does that mean?

9 A To be honest, I'm not exactly sure what this is

10 referring to from that perspective because I -- I don't -- I

11 don't really know -- unless it was a bank that wanted to get

12 into the messaging -- I really don't know exactly what this

13 is a reference to.

14 Q Sure. Do you remember any discussions about --

15 sort of about an effort to get a bank to invest in them?

16 A I don't recall that specifically.

17 Q The third line says, "Strategic Investment Cloud

18 AI."

19 A (Witness nods.)

20 Q What did -- what did that mean?

21 A That would -- that would be the notion that

22 perhaps, say, an Amazon or somebody that does a cloud-based

23 capability or infrastructure might be interested in a

24 messaging company, and there could be some interest there.

25 Q And did Kik have conversations with that kind of

Page 62

1 company?

2 A I don't know that for sure.

3 Q And then what's venture debt?

4 A So venture debt is when you go to a -- a vendor

5 that is familiar to the venture industry -- Silicon Valley

6 Bank or Bridge Bank or others like that -- and you -- you go

7 basically get a loan.

8 Q Okay. So that's -- that's not a venture capital

9 investment?

10 A That's correct.

11 Q Okay.

12 A It's -- it's a loan from a bank.

13 Q Do they tend to be secured or unsecured?

14 A They tend to be secured.

15 Q Do you know whether Kik approached any banks about

16 getting venture debt?

17 A Kik had conversations with banks about the

18 possibility of getting venture debt.

19 Q And where did that lead?

20 A It led to a decision not to take the venture debt.

21 Q Why?

22 A Because the venture debt would've put the company

23 in perhaps a more precarious position.

24 Q Sorry. How would having cash in -- put them --

25 make it more precarious?

Page 63

1 A Because, when you bring the venture debt in, it

2 comes with covenants, and the covenants relate to runway and

3 things like that, so --

4 Q Do you know -- do you remember who -- who the

5 counterparties that Kik talked to were?

6 A I believe Silicon Valley Bank was one of the

7 players. It's quite common that we will speak -- a venture-

8 funded company will speak to several of the vendors in that

9 space. But Silicon Valley Bank, I believe, was one of the

10 ones.

11 Q But none of the banks offered a venture debt that

12 met Kik's -- that Kik wanted?

13 A There were -- there were no proposals for venture

14 debt that were accepted.

15 Q And, at this point in time, did Kik have a runway?

16 A Kik had runway. I mean, there was still cash in

17 the bank.

18 Q And how long was the runway?

19 A I don't know.

20 Q So, again, we saw that word "crypto currency."

21 And you've discussed the idea of a pivot to Kin.

22 At some point in this time, the board -- the --

23 someone proposed to the board that -- that the company

24 consider this option?

25 A Yes.

Page 64

1 Q Who proposed it?

2 A The CEO of the company proposed that we consider

3 that option.

4 Q And, at that time, what -- sorry. I asked you a

5 question earlier, and I -- we sort of went off on something

6 else.

7 We've discussed Kin. At some point farther down

8 the

9 road we'll get to eventually, did Kik sell Kin?

10 A I don't -- I don't recall it that way.

11 Q What do you recall?

12 A I don't -- I don't --

13 Q Yeah. What do -- what do -- sorry. Tell me what

14 you recall?

15 A That we -- that the board asked for

16 recommendations from the company. The company had indicated

17 that they wanted to look at this path. The company went and

18 secured a relationship with a consultant that had been

19 working with other people on their crypto currency

20 offerings, CoinFund. And then, eventually, the management

21 and the -- and the consultant came back with a set of

22 recommendations.

23 Q Sorry. I totally appreciate it. I'm trying to

24 actually do something just sort of simple.

25 Farther down the road, September, that fall --

Page 65

1 A Yeah.

2 Q -- at some point, did Kik sell Kin to people out

3 in --

4 A At some point, Kik -- at some point, an ICO was --

5 was executed upon.

6 When you say "Kik selling Kin," I just don't know

7 if

8 that's the terminology I would use around that. But there

9 was an ICO that was executed upon it.

10 Q Sure. So when that ICO was executed, what did Kik

11 get?

12 A There's a formula of where the proceeds went to

13 the Kin Foundation and went to Kik.

14 Q Sorry, I --

15 A I don't recall the exact formulas.

16 Q Sure. Did -- did somebody -- did people come

17 with, like, satchels full of cash money to Kik's offices and

18 hand it to them?

19 A Not that I know of.

20 Q What did Kik get --

21 A Kik --

22 Q -- in that sale?

23 A What Kik got in that sale were people that had

24 bought the token associated with Kin.

25 Q Okay. So -- so, in the sale, people bought a

Page 66

1 token?

2 A That's my recollection.

3 Q Okay. And did Kik get ether in return?

4 A I believe Kik got ether. I don't know if it was

5 exclusively ether, but --

6 Q Okay. So -- so the thing that they bought is --

7 I'm just going to use the term "Kin token." Is that -- does

8 that work?

9 A That's my recollection.

10 Q Okay. Great.

11 A Yeah.

12 Q So pulling you back in time back to this sort of

13 initial end of January, early February, what did Kik know

14 about selling tokens at that time?

15 A I don't know.

16 Q What did you know at that time about selling

17 tokens?

18 A Almost nothing.

19 Q Who was the -- did anyone else on the board know

20 more about it than you did?

21 A Fred Wilson knew more about it than -- than I did.

22 Q Anybody else on the board?

23 A Ted, our CEO.

24 Q Okay. What -- what did -- what did Ted know about

25 selling tokens?

Page 67

1 A I don't know.

2 Q And at this meeting -- well, tell me about this

3 meeting. There's a -- a meeting happens that these board

4 decks -- sorry.

5 Are these board decks using in the meeting?

6 A Yes.

7 Q And so what -- tell me what happened in the

8 meeting.

9 A A series of investment alternatives were

10 discussed. The board requested more information back from

11 management, and then management went off and did more work.

12 Q Okay. And those investment alternatives is --

13 that's the page we were just looking at with 5747?

14 A Yes. And I'm just looking at the more detail on

15 that.

16 Yes.

17 Q All right. And this is -- so these are

18 alternatives for the way that Kik could get people to invest

19 in its business?

20 A I don't recall the way that it was phrased in that

21 time. Over time, I've now known it to become creating the

22 Kin Community and people that would buy tokens as part of

23 the Kin Community. I just don't recall the phraseology from

24 that time.

25 Q But the phraseology mattered, you think?

Page 68

1 A You just phrased it a specific way, and I just

2 can't answer that that's how I recall it.

3 BY MR. LEASURE:

4 Q Can I point you to Exhibit 13B.

5 A Yeah.

6 Q Can I point you to page 28, which has Bates stamp

7 ending 5800.

8 Tell me when you're there. It begins with a

9 header

10 of "Create a Go to Market and Resourcing Plan" --

11 A Got it. Yeah.

12 Q -- on --

13 A Yeah.

14 Q Good. I'm going to point you to item No. 1. I'll

15 read it aloud. Correct me if I get it wrong, please.

16 A Okay.

17 THE REPORTER: Can you keep your voice up a little

18 bit.

19 BY MR. LEASURE:

20 Q I'll read it -- I'll read aloud. Please correct

21 me if I'm getting it wrong.

22 "1. Work with CoinFund to put together a go-to-

23 market plan including a crowd sale to fund the company."

24 Was CoinFund the -- that's the outfit you were

25 talking about to consult with -- that Kik wanted to consult

Page 69

1 with about this offer?

2 A That's my recollection, yes.

3 Q Now, in terms of the phraseology of this, this

4 says, "Including a crowd sale to fund the company."

5 Is that ultimately what the Kin offering was?

6 A That's what the terminology is here. It's very

7 common when you're doing a pivot to a new company that you

8 have a set of initial things that you consider. And those

9 -- those things then evolve as you learn more about them.

10 So, at this point in time, what you just read is

11 correct. The evolution of what it turned into -- it became

12 a more substantial discussion at that point. So when you

13 phrase it in the way that you phrased it, I can't answer

14 that as that was the way it was and is the way it is.

15 Q So in September 2017, when Kik sold Kin tokens

16 public, that was not funding the company at that time?

17 A That was basically funding the Kin Community.

18 That was the way that it was discussed with the board.

19 BY MR. SCHLEGELMILCH:

20 Q Did --

21 MR. MITCHELL: Can I --

22 MR. SCHLEGELMILCH: Of course.

23 BY MR. MITCHELL:

24 Q So at this initial meeting that these board decks

25 were used at, was it discussed that part of the plan was

Page 70

1 that Kik would work with CoinFund to put together a go-to-
 2 market plan including a crowd sale to fund the company?
 3 A That is literally what we just read, and I agree
 4 that this is what the board deck says. So that is what was
 5 the discussion at that time.
 6 Q Is that what Kik management recommended to the
 7 board?
 8 A Kik management represented that they work with
 9 CoinFund to put together a go-to-market plan, and -- and
 10 that's what they recommended to the board.
 11 Q Okay.
 12 MR. FONDO: So just to be clear, though, they're
 13 asking what your recollection is. They're not asking you to
 14 read.
 15 MR. MITCHELL: Correct.
 16 MR. FONDO: And correct me if I'm wrong. You're
 17 not asking him to read the board materials.
 18 MR. MITCHELL: Yeah.
 19 THE WITNESS: Right.
 20 MR. FONDO: But what is your recollection at that
 21 time?
 22 THE WITNESS: My recollection is -- is higher-
 23 level than the way you're referring to it. It was
 24 management was going to go do more research on the
 25 concept of -- of building out the Kin Community

Page 71

1 ultimately, and that they were going to work with a
 2 consultant to come back and give recommendations to the
 3 board, and that was it.
 4 So when you read this specific line with a
 5 specific date, I can only comment on what I see here.
 6 BY MR. MITCHELL:
 7 Q At this time, was -- were they proposing that
 8 whatever process they were -- whatever plan they were going
 9 to do, that it would involve getting more -- that it would
 10 involve getting money for Kin -- for Kik?
 11 A The -- I -- I don't know how to answer that
 12 because my recollection from that time was just simply
 13 listening to the report coming out from the group. So if
 14 you're asking me, I don't know how to answer that. I don't
 15 know the answer to that.
 16 Q Did the report that you heard include the idea
 17 that Kik would work with CoinFund on something, and that
 18 something would involve cash coming into Kik?
 19 A Again, the -- you're asking a specific thing about
 20 cash coming into Kik.
 21 Q Sorry. Anything of --
 22 A That's not --
 23 Q Anything of value.
 24 A That's not -- the -- the -- the -- the
 25 understanding that I gained over time was that we were going

Page 72

1 out and basically building the Kin Community. And the Kin
 2 token scale would facilitate doing that including having
 3 some proceeds that would go to Kik to help fund the
 4 infrastructure around the Kin Community.
 5 Q Sure. Thank you.
 6 A Does that -- does that answer your question?
 7 Q What I'm going to do is let me just ask you real
 8 quick another question.
 9 A Yeah.
 10 Q At this meeting when these board decks were used,
 11 were people talking about a process under which Kik would
 12 have raised capital?
 13 A The process was not described to me as Kik raising
 14 capital. It was building the Kin Community.
 15 Q That was discussed in February first?
 16 A I -- I don't recall the specifics of that. Again,
 17 I'll just repeat. Over time, I understood it as that. In
 18 this meeting, this was the very first time I'd ever had
 19 somebody come into a board meeting in my entire career and
 20 discuss -- you know, whether it's this one or the other one
 21 in this time period, very first time I'd ever encountered
 22 the concept of a digital currency or internet currency
 23 offer.
 24 Q So what was the concept they described to you?
 25 A I don't recall the specifics of that date and that

Page 73

1 meeting.
 2 Q Sure.
 3 A I can only read from the document that you've
 4 given me.
 5 Q Okay. Did you -- did they describe to you
 6 something in which Kik would give out digital currency just
 7 to everybody for free?
 8 A I don't recall it that way.
 9 Q How do you recall it?
 10 A I recall that there would be a -- a digital
 11 currency, a token that would go out to market and that
 12 people would buy the token.
 13 Q And who -- who would they buy it -- who -- who
 14 would they get the token from?
 15 A At the time, I didn't understand the structure in
 16 terms of how that was going to work. Over time, I
 17 understood it to be the Kin Foundation.
 18 Q Sorry. Okay. In February, though, you understood
 19 that there was -- that the discussion was -- involved this
 20 transaction where people would give -- I'm sorry -- I
 21 apologize. But I -- I don't remember what word you used.
 22 What did you say people would give to get -- get the token?
 23 A I don't remember that either actually. Sorry.
 24 Q I apologize. Let me just reread your answer.
 25 (Record read.)

Page 74

1 THE WITNESS: Right.

2 BY MR. MITCHELL:

3 Q Where did you -- who did you think -- sorry. I

4 apologize if I repeat -- I'm going to repeat my question

5 maybe.

6 Who did you understand at this time in February --

7 or where these board decks were used, would receive whatever

8 these people paid?

9 A I didn't know because I'd never done an internet

10 currency offering.

11 Q Sure.

12 A I was in a board meeting hearing for the first

13 time how something like this might work.

14 Q And --

15 A I would be completely speculating if I guessed as

16 to what that was going to be.

17 Q And, at that time, did you understand that this

18 possibility of people buying tokens could have an effect on

19 Kik's runway?

20 A Yes, I did.

21 Q What effect?

22 A It would extend Kik's runway.

23 Q How?

24 A Because people would buy the tokens and that,

25 according to some formula that was to be determined, there

Page 75

1 would be proceeds associated with that to serve the notion

2 of the Kin Community, and Kik would be part of serving that

3 community. So the infrastructure, the messaging backplane,

4 things like that would be made available.

5 Q But how would that extend Kik's runway?

6 A I think I just answered that. I -- because some

7 of the proceeds would go to Kik.

8 Q So after Mr. Livingston -- sorry.

9 Was it -- Mr. Livingston sort of presented this

10 idea

11 to the board?

12 A I don't recall specifically. But the expectation

13 would be yes.

14 Q And --

15 A It was often Mr. Livingston presenting to the

16 board.

17 Q So then what happened? He makes the presentation.

18 What happened next in the meeting?

19 A The board asked for additional information.

20 Q What information?

21 A The -- the notion of what would be next steps

22 associated with the -- the offer.

23 Q And did Mr. Livingston give more information --

24 sorry -- at that meeting?

25 Did he give more meeting -- information at that

Page 76

1 meeting?

2 A I don't recall whether he gave us any more

3 information at that meeting. I recall that we had asked him

4 to do additional work and come back and advise the board.

5 Q What kind of work did you want done?

6 A Upgrade our understanding of exactly how this

7 would work.

8 Q Okay. So then at the end of that meeting, what

9 did you think of -- what -- what did you think of this idea

10 sort of at that point in time now?

11 A It was a new idea for me. I would say I was

12 intrigued. But I -- I -- I knew virtually nothing about it.

13 And so I needed to understand more to have an opinion as a

14 board member.

15 Q What did you think -- how -- sort of where did you

16 think Ted was?

17 When he makes this presentation, how did -- you

18 know, where did you think he was sort of as a CEO at that

19 point?

20 A I didn't ask him that question specifically, but

21 he was engaged and was motivated to -- to do more work

22 around this offering.

23 Q And did you have sort of an idea of what the

24 company's strategy should be at that point?

25 A I did not. As it relates to this, I did not.

Page 77

1 Q Okay. And did you have a thought about whether

2 the board should consider hiring a new CEO?

3 A I don't recall a specific discussion at that time.

4 I will just simply tell you, in every board I've ever been

5 on, there's always discussions about the CEO.

6 Q Were there discussions around this February 1st

7 board meeting about the idea of replacing Ted Livingston as

8 CEO?

9 A I don't recall specifically around that time

10 period. It's very common that the board -- it's one of the

11 top board obligations, is to discuss who should lead the

12 company.

13 (SEC Exhibit No. 44 was marked for

14 identification.)

15 BY MR. MITCHELL:

16 Q Okay. So I'm going to give you what I'm going to

17 mark as Exhibit 44. Exhibit 44 is an e-mail. It's three

18 pages long, although it's printed double-sided to save the

19 trees. It has a Bates No. KIK_FOUNDATION_CAP_001289 to

20 1291.

21 Mr. Holland, just take a chance to -- take

22 your time to look at it. The first question I'm going to

23 ask you is, do you recognize this document?

24 A Yes, I do.

25 Q What is it?

Page 78

1 A It's an e-mail exchange between myself, Fred
2 Wilson, Danny Karubian -- or Karubian, and Sam Spadafora.
3 Q Mr. Karubian is a board observer for Kik?
4 A A board observer, yeah.
5 Q So I'm going to take you to the second page. Well
6 -- yeah. Take you to the -- this is a -- this is an e-mail
7 exchange where the first e-mail is actually at the bottom,
8 and it works backwards up to the top?
9 A Yes.
10 Q Okay. So I'm going to -- so the first e-mail,
11 which actually is at the bottom of the second page, that's
12 an e-mail from Mr. Karubian?
13 A That's right.
14 Q And then above that sort of starting a couple
15 lines down from the second page, is that an e-mail there
16 from you?
17 A The e-mail is from Mr. Karubian. Is that what
18 you're referring to at the bottom, "On the Kik M&A front"?
19 Q Yeah. Sorry. That's the part that's from Mr.
20 Karubian, I think.
21 A Right.
22 Q Is that --
23 A And then -- and then, "Next level up."
24 Q "Next level up," who is that from?
25 A It's from me.

Page 79

1 Q Okay. So I'm just going to read this.
2 A Yeah.
3 Q It says, "In my mind, we move to a two-prong
4 strategy. 1 - crypto with a 20-person crew. 2 - look for
5 merger candidates with our cash and capabilities as the
6 carrot."
7 Do you see that?
8 A Yes, I do.
9 Q Is that what you -- at this time, February 1st,
10 2017, was that your view of how Kik should move forward?
11 A This was one of the options that we could pursue.
12 BY MR. SCHLEGELMILCH:
13 Q Can I ask you, what did you mean by "crypto with a
14 20-person crew"?
15 A As I mentioned earlier, I was very unfamiliar with
16 the process of -- of an ICO and kind of how the process
17 would work. So my bias was toward just a much smaller burn
18 rate for the company, kind of regardless of which strategy
19 we pursued.
20 And so this was saying we could pursue the crypto
21 strategy but just do it with a smaller group, because I'd
22 never done an ICO offering before, so I just didn't know --
23 I literally didn't have any way to handicap our -- our
24 chances of success in -- in succeeding in the offering. And
25 so the notion was a more conservative path would be just to

Page 80

1 cut the company way back and to pursue whatever paths we did
2 with a smaller group of people.
3 BY MR. MITCHELL:
4 Q Okay. And in the -- I'm going to read the second
5 part. It says, "I would" -- in the e-mail that I -- from
6 you, it says, "I would create a carve-out for the key people
7 to incent them to stick around. I would also consider
8 hiring a turnaround CEO to execute on the cuts and a 12 to
9 18 month strategy to rebuild value and ask Ted consult to
10 the new CEO. Lots of things can go wrong, but I've lot
11 confidence in Ted and Peter to develop" -- "to deliver value
12 beyond an asset sale."
13 Do you see where I read that?
14 A Yes.
15 Q Did I read it correctly?
16 A Yes, you did.
17 Q Had you lost confidence in Ted and Peter to
18 deliver value beyond an asset sale?
19 A I'd lost confidence in Ted and Peter to continue
20 to run the messaging service in the way that we had done and
21 at the burn rate that we had done it.
22 Q Why?
23 A Because we had not yet delivered value as far as,
24 you know, the -- the original vision of the company.
25 Q I'm sorry. And "Ted" in that sentence is Ted

Page 81

1 Livingston?
2 A That's right.
3 Q And the "Peter" in that sentence is Peter Heinke?
4 A The CFO. Yeah.
5 MR. MITCHELL: H-e-i-k-e.
6 THE WITNESS: H-e-i-k-e.
7 MR. FONDO: -n-k-e.
8 MR. MITCHELL: All right.
9 THE WITNESS: -n-k-e. Sorry.
10 MR. MITCHELL: For the record, we're -- I'll get
11 you the right spellings later. I'm going to stop
12 giving you the wrong spellings. Sorry.
13 BY MR. MITCHELL:
14 Q Okay. So then above your e-mail is another e-mail
15 from Mr. Karubian; is that right?
16 A That's right.
17 Q And then in the -- then is there another e-mail
18 from -- from you in the -- sort of two-thirds of the way
19 down the first page?
20 A Yes, it is.
21 Q So I'm going to read that. I think it says,
22 "Agreed. On my one-on-one, I got the feeling that Ted was
23 in the jaws of the lion. I'm afraid it will be impossible
24 for him to adjust." And then there's a "D." "He'd rather
25 go out of business than cut to 20 and start over. Not

Page 82

1 surprising."

2 Do you see where I read that?

3 A Yes, I do.

4 Q Did I read it correctly?

5 A Yes, you did.

6 Q Okay. So what did you mean that Ted was in the

7 jaws of the lion?

8 A That with the existing messenger business, he was

9 uninterested in cutting it back and trying to survive for

10 the longer term to look for other M&A candidates.

11 Q How did you know he was uninterested?

12 A It was just the feeling I got from him as we

13 discussed these options.

14 Q When he -- when you -- sort of what he said and

15 how he acted?

16 A Yes.

17 Q And then it says he'd rather go out of business

18 than cut to 20 and start over. That -- that was your

19 impression of what his thinking was at that point?

20 A As it related to staying in the core messaging

21 market and continuing with the current strategy.

22 Q And then above that is -- above your e-mail, is

23 there an e-mail from Fred Wilson?

24 A Yes, there is.

25 Q Okay. And then, at the top, is there an e-mail

Page 83

1 from you?

2 A Yes, there is.

3 Q All right. And then I'm going to read. That e-

4 mail says, "You are probably right, Fred."

5 Oh, sorry. What -- are you discussing in the --

6 in your -- the e-mail that's at the top sort of a potential

7 CEO candidate?

8 A Yes, I am.

9 Q And so you wrote, "You are probably right, Fred.

10 The guy I have in mind has pulled some rabbits out of hats

11 for us, but this is a very overweight rabbit."

12 A Yes.

13 Q What did you mean?

14 A At the time, at the current course and speed for

15 the original strategy for the messaging product and at our

16 burn rate, it was going to be hard for even a good

17 turnaround person to come in and, you know, kind of pull the

18 rabbit out of the hat as it were, go execute on a sale, do

19 the cutbacks, do the other things that were there. It was

20 going to be hard work.

21 Q Okay.

22 BY MR. SCHLEGELMILCH:

23 Q Oh, yeah. One question. In your -- your earlier

24 e-mail, the one at 11:37 a.m., you indicate that you had a

25 one-on-one.

Page 84

1 Was that a one-on-one with -- with Mr. Livingston?

2 A Sorry. Where are you?

3 Q Sure. You write, "Agreed. On my one-on-one" --

4 A Oh, "On my one-on-one." Yes. It was -- it was

5 common that Ted would do pre-meetings with board members,

6 and at some point during this time period, I would've ended

7 up in a one-on-one with Ted.

8 Q Okay. So your view about Mr. Livingston, and his

9 management, and his willingness to do or not do certain

10 things was informed by a personal meeting that you'd just

11 had with him; is that right?

12 A It was -- it was informed by, now, years of

13 conversation and exposure.

14 BY MR. MITCHELL:

15 Q Okay. I'm going to take 44 back from you just to

16 sort of keep things organized. And I will take back 12 and

17 13 from you.

18 A Okay.

19 Q Just a couple just background questions.

20 At this point that we're talking about in time,

21 this

22 point in time, what did you know about sort of the market

23 for tokens?

24 A Very little.

25 Q Did -- at that point, had you invested in any

Page 85

1 tokens personally?

2 A I -- I -- I had not.

3 Q And have you since?

4 A I have not.

5 Q Do you know people who did?

6 A I do.

7 Q And so, at this point in, you know, 2017, was

8 there a market for people to -- you know, people who are

9 interested in buying and selling tokens?

10 A As far as I know, yes. As far as I knew, yes.

11 Q And why -- as far as you knew, why were people

12 buying and selling tokens then?

13 A I didn't have a sophisticated understanding of it

14 in that time period. I just didn't -- I just didn't know

15 enough about that market to look at the projects themselves

16 and the various different things to kind of understand it.

17 I was learning about it as many people were at that time.

18 Q Well, at that time, what did you understand that

19 -- why were people -- well, sorry.

20 At the time, you understood that people were

21 giving up something of value to get tokens?

22 A At that time, the -- the -- the things that I had

23 heard about were typically what I recall kind of projects

24 and that people wanted to support the project, a project,

25 for example, to have an advertising-free browser or a

Page 86

1 privacy-based browser or some other type of thing. People
2 would then buy the token to support that project to develop
3 that browser.
4 Q Like a donation?
5 A I wouldn't use the term "donation."
6 Q Why not?
7 A But that was just what I understood that people
8 did.
9 Q Sure. Why --
10 A And I didn't have a sophisticated understanding of
11 how it worked. But I -- that's just what I understood.
12 Q Why wouldn't you use the word "donation"?
13 A Because that's just not how I -- I had heard it
14 referred to. I heard that people would buy the tokens.
15 Q Oh, buy them?
16 A Correct.
17 Q And why were people buying them?
18 A To support specific projects.
19 Q What is -- what -- what do you mean by "support"?
20 What -- just I'm trying to understand that they were -- what
21 do they mean -- what do you mean when you say that they were
22 supporting it?
23 A They would buy tokens associated with specific
24 projects that people were trying to accomplish. Some of
25 them were just simply to kind of make the internet work

Page 87

1 better, or they were offering capabilities for digital
2 users. Like I said, like an advertising-free browser, that
3 type of thing.
4 Q And so they bought the tokens just because they
5 wanted there to be an advertising-free browser?
6 A I don't know why they bought the tokens. I never
7 talked to anybody and asked them why.
8 Q Okay. So after this -- oh, we talked about a
9 meeting that happened with the board decks at 12 and 13B.
10 A Mm-hmm.
11 Q What happened after that?
12 A The company worked with a consultant and came back
13 to the board with more recommendations or more -- I guess,
14 more substantial recommendations. Yeah.
15 Q And sorry. Was that done at another meeting, or
16 was it done -- how was that done? Like, literally, how --
17 how did the company come back? Like, one-on-one phone calls
18 or meetings?
19 A They came back and reported to the board on the --
20 what they had learned about the strategy.
21 Q Okay. And what had they learned?
22 A I don't recall the specifics of -- of what they
23 learned from that perspective. They came back and reported
24 that they had done work and here was the result of the work.
25 Q Who had done the work?

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1 A Management and the consultant.
2 Q Who is the consultant?
3 A My understanding is the consultant was CoinFund.
4 Q CoinFund?
5 A Yes.
6 Q And that's a company?
7 A I don't know the structure of CoinFund.
8 Q Sure.
9 A I don't recall actually ever meeting anyone from
10 CoinFund so --
11 Q So, back then, what did you understand CoinFund
12 was?
13 A It was a consultant that helped companies execute
14 on ICOs.
15 Q Okay. And ICOs are the sale of the tokens?
16 A Internet currency offerings.
17 Q Is that the -- is that -- is that the same as --
18 you were describing earlier that people would buy tokens.
19 Is --
20 A Are you asking what I understand now or what I
21 understood then?
22 Q Sure. Let's start then.
23 A I didn't know how ICOs worked. So I knew what the
24 term meant, I didn't really know what the mechanics were
25 like. So when we had a consultant go off and do the work, at

Page 89

1 least for me, I'd be learning everything bespoke at that
2 point.
3 Q So what -- like -- so what -- what did they -- at
4 this meeting, who presented to -- sorry.
5 Was it -- the next meeting, was it in person or on
6 the phone?
7 A I don't recall.
8 Q Do you remember who sort of made the presentation
9 to the board?
10 A Typically, Ted made the presentation to the board
11 on all things related to the new strategy.
12 Q Okay. So what -- so what -- what did he tell you
13 that they had learned?
14 A I don't recall the -- the specifics. The general
15 notion was that there was an opportunity to go and execute
16 on an ICO.
17 Q And what -- what was the opportunity?
18 A Just that there was. Not -- not what it was, just
19 that there was.
20 Q Okay. I'm going to -- I understand you don't
21 remember the specifics.
22 A Yeah.
23 Q So I'm going to give you what's already been
24 marked as Exhibit 14B.
25 And again, the first question I'm going to ask you

Page 90

1 is, do you recognize the document?

2 A I recognize this as a Kik board deck.

3 Q And is the first page an e-mail from Ted

4 Livingston to the Kik board?

5 A Yes.

6 Q Okay. And then I'm going to -- that sounds good.

7 And that's dated February 16th, 2017?

8 A Yes.

9 Q So this is -- this -- the date on this says "Board

10 meeting February 16th, 2017" on the second page -- oh,

11 sorry. I'm going to start over.

12 Exhibit 14B is a multipage document with a Bates

13 number -- starts with the Bates No.

14 KIK_FOUNDATION_CAP_001591 to 1635. On its face, as we've

15 discussed, it's an e-mail from Ted Livingston to the board

16 with a copy CC to Derek Lebert, L-e-b-e-r-t, and it's dated

17 February 16th, 2017.

18 A (Witness nods.)

19 Q So this is roughly two weeks after that initial

20 meeting.

21 A (Witness nods.)

22 Q How was -- how was the company doing at this

23 point?

24 A No appreciable difference.

25 Q No appreciable improvement at that point?

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1 A So, from time to time, the company would have

2 blips of -- like, MAUs and DAUs would pop up and pop down.

3 And I'm not trying to be an ass, but just like when you

4 asked me that specifically, I don't know the answer. Like,

5 I don't know if that two-week period was one that we had

6 kind of an uptake but, generally, not much was new --

7 Q Got it.

8 A -- from my perspective.

9 Q Do you know a person named Erin Clift?

10 A Yes.

11 Q Do you -- do you remember -- and so I'm just going

12 to have you look at the page that ends 1593. And, at the

13 top, it says "Agenda."

14 A Yes.

15 Q And you see it has three lines. And it's a --

16 three lines and there's a person's name next to each one?

17 A Yes.

18 Q Ted, Erin, and Eran.

19 A Yes.

20 Q E-r-a-n?

21 A Right.

22 Q So I'm just looking to, again, to refresh your

23 recollection.

24 A Sure.

25 Q Do you remember who -- does this help refresh your

Page 92

1 recollection at all about who made the presentations that

2 day?

3 A Yes, it does. I have to admit, though, I just

4 don't -- without seeing the minutes, I don't know if I was

5 present for this meeting. So if I -- if the minutes say I

6 was present, then I was present. If there were -- I didn't

7 -- I generally made board meetings. I didn't make every

8 single board meeting.

9 Q So you can consider this a service of the Federal

10 Government. I can give you the -- the board minutes. These

11 have been marked 25.

12 I'm just going to give you what's marked as

13 Exhibit 25. It's --

14 A Okay. So I was present, meaning present probably

15 on the -- on video or on the phone, but yes.

16 Q Video. Just -- just for the -- you and I are

17 looking at the document, and nobody else is.

18 A Yeah. Right.

19 Q It's a -- what you're looking at is -- Exhibit 25

20 has the Bates No. KIK_00078776 through 778. On the top it

21 says --

22 A Right.

23 Q -- it's the minutes of a meeting of the board of

24 directors of Kik Interactive. It's dated February 16th.

25 This refreshes your recollection that you at least

Page 93

1 participated?

2 A Yes.

3 MR. FONDO: Let me just clarify.

4 So are you saying that you now remember you were

5 there, or, by looking at the board minutes, you would say, I

6 must have been there because I'm on the board minutes.

7 THE WITNESS: The latter.

8 BY MR. MITCHELL:

9 Q Okay.

10 A Because I'm looking at the board minutes, I must

11 have been there. Right?

12 Q Well, sounds good.

13 What do you remember from this, like, what -- what

14 you were -- what the board was told at that meeting?

15 A Independent of looking at this board deck, I -- I

16 don't remember a lot of specifics. If you want me to look

17 at the board deck and comment, I can certainly do that.

18 Q Sure.

19 Well, did -- did people tell you that there was a

20 market for -- that there was an opportunity? I think that

21 was the word we were using before?

22 A Yes.

23 Q So I'm going to -- you can look at the page that

24 ends in 160 -- 1601. It's actually has a heading that's

25 called "The Immediate Opportunity."

Page 94

1 A Right.

2 Q Let me just step back one second. This board --

3 this deck was used at the meeting?

4 A As far as I recall, yes.

5 Q Okay. And so starting on the page I just had

6 brought you to and running forward, say, three more pages,

7 is that a description of the opportunity that Kik management

8 described to the board?

9 A At that time, that was an understanding of the

10 opportunity.

11 Q Okay. So at that time, what was your

12 understanding of sort of what the opportunity was?

13 A Whatever I was told by the management and the

14 consultants. I was learning it on the fly.

15 Q And was there discussion at the meeting about who

16 might have an appetite for tokens?

17 A I don't recall that. I don't recall a specific

18 discussion on it.

19 Q Was anyone from CoinFund at the actual meeting?

20 A I don't recall that.

21 Q On -- there's a page that ends -- the Bates number

22 ends in 1604. Do you see that page, 1604?

23 A 1604. 604. Yes.

24 Q Do you see it says the word "crowdfunders"?

25 A Yes.

Page 95

1 Q What did that mean to you?

2 A I didn't know what the concept of crowdfunders

3 were as it related to the ICOs or ICO process. The term

4 crowdfunders are people who contribute to projects like Kick

5 -- like Kickstarter and some of the other crowdfunding

6 platforms. So there are projects that people will launch,

7 and someone will look at that and say, I like the idea of

8 that project, and they'll contribute to that project.

9 Q Like Kickstarter?

10 A Sorry. Like Kickstarter. Yeah.

11 Q Have you ever contributed to anything on

12 Kickstarter?

13 A I have not.

14 Q When people contribute on Kickstarter, what do

15 they get?

16 A I don't know because I haven't done it.

17 Q Was it your understanding at this meeting that

18 people were going to give -- that the idea was that

19 crowdfunders would give Kik money and Kik would give them a

20 product, like a -- you know, like a new sweatshirt -- some

21 kind of a sweatshirt or some other kind of physical product

22 that Kik was going to give them?

23 A I don't recall a discussion like that.

24 Q Did -- was there any -- did you -- was there a

25 discussion that crowdfunders were going to give their money,

Page 96

1 and Kik was going to give them some kind of digital product

2 back like a -- stickers or some kind of other just product

3 that's digital, just not physical?

4 A There was a discussion that people involved with

5 the -- the offering would be participating in the -- in the

6 -- the community that would occur around it. But, again,

7 when you're -- if you're asking me specifically on this

8 date, I don't recall when the ideas evolved to that point.

9 I can only simply comment on what I can see here.

10 Q Okay. So then if you go back one page, the page

11 that ends with 1602.

12 A Yes.

13 Q Do you see it says, "We believe that the scale of

14 our network alone will drive strong interest from the crypto

15 investor community"?

16 A Right.

17 Q What did that term mean to you, "crypto investor

18 community"?

19 A I didn't -- I was very unsophisticated in

20 understanding the ICO process as I've mentioned. So when

21 you said "crypto investment community," it's whatever the

22 consultant came back and said that's what that represents.

23 Q What did they come back and say?

24 A People that were investing in digital currencies.

25 Q So then if you flip, there's a -- back to -- flip

Page 97

1 farther in, there's a page that ends in 1605 that says the

2 bigger picture.

3 A Bigger picture. Yeah.

4 Q Do you see that?

5 What -- what was this section? What was -- when

6 they presented on this, what were they talking about?

7 A I can -- I can read from the document and say that

8 Kik can pioneer new applications of the Blockchain.

9 MR. FONDO: I don't -- I don't -- I don't think

10 he's asking you to read the document. I think he's

11 asking what you remember.

12 THE WITNESS: Yeah.

13 BY MR. MITCHELL:

14 Q Yeah. I'm just asking, what -- do you remember --

15 do you remember anything about this discussion? What --

16 A I don't. I don't remember the specific

17 discussion. No.

18 Q Okay. And then I'll flip you to the page that

19 ends in 1611. It says "Next steps." Do you see that?

20 A Yes.

21 Q So then are the next three pages -- were -- are

22 these the next steps that management proposed to the board?

23 A I don't recall the next steps specifically but I

24 don't have any reason to doubt that these are the next steps

25 that were -- were proposed to the board.

Page 98

1 Q Okay. So on the next page, it ends in 1612,
2 again, there's that name, CoinFund?

3 A Yeah.

4 Q What did Kik hire CoinFund to do?

5 A To help learn about the viability of an ICO and to
6 help teach the company the mechanics associated with an ICO.

7 Q What do you mean, viability of an ICO?

8 A Whether or not there would be something that would
9 come out to market that people would find appealing.

10 Q What do you mean, come out to market?

11 A I mean whether you execute on an ICO and whether
12 the ICO is considered to be successful.

13 Q But when you say something comes out to market,
14 what do you mean?

15 A That there's -- I'm not -- I'm actually not sure
16 what you're asking.

17 Q You just said to me comes out to market.

18 A Right.

19 Q When something comes out to market, what do you
20 mean?

21 A When a new company emerges or a new offering
22 emerges, a new capability that the marketplace wants
23 emerges, that's what I mean by -- by something comes to
24 market.

25 Q That it's a new thing that people could buy?

Page 99

1 A It's -- it's a new experience people may have.
2 It's not always things that people buy in my world.

3 Q And then teach the mechanics, what did you mean?

4 A That there was a process that -- that had to be
5 gone through and that the CoinFund guys had worked with
6 other people in that process before, and they would work
7 with Kik to understand that process better.

8 Q And what do you mean, it was a process that had to
9 happen or it had to be gone through?

10 A Well, I don't -- when you're saying "had to be
11 done," I was just simply using it as CoinFund was going to
12 work with them on the mechanics associated with an ICO. And
13 CoinFund would then come back and say, These are the
14 mechanics associated with an ICO.

15 Q And so did Kik help -- I'm sorry. Did CoinFund --
16 did Kik want CoinFund to help it figure out what the
17 structure of the -- you know, the structure of the ICO would
18 be?

19 A As far as I know, yes.

20 Q And the timing of the ICO?

21 A I assume so. But I -- I don't -- but you're
22 asking specifically did they ask CoinFund to tell them the
23 timing? I don't know the answer to that.

24 Q Then did Kik want CoinFund to help them draft the
25 white paper?

Page 100

1 A That was my understanding, that that was one of
2 the capabilities that CoinFund had.

3 MR. MITCHELL: I think it would be -- oh.

4 MR. LEASURE: Can I do a few things just while we
5 have these documents in front of us?

6 BY MR. LEASURE:

7 Q So would you agree that just based on these
8 documents and your recollection, in mid-February 2017, Kik
9 was considering whether to do an ICO?

10 A Yes.

11 Q What's an ICO?

12 A An internet currency offering.

13 Q Have you ever heard of the term "initial coin
14 offering"?

15 A I've heard the term of that. And, at the time
16 that these meetings were happening, I was brand-new to this
17 entire concept, so I was learning along the way.

18 Q Okay. But so now, it's -- it is 2018. Is there a
19 difference between an internet currency offering and an
20 initial coin offering in your mind?

21 A I don't know.

22 Q Why do you use the term internet currency offer?

23 A Because that was the term that I was familiar with
24 at the time.

25 Q At this time, were people at Kik using the term

Page 101

1 internet currency offering?

2 A I don't recall.

3 Q Do you recall them using the term initial coin
4 offering?

5 A I don't recall the specific terms associated with
6 it. Again, I was brand-new to the concept, so everything
7 that was coming up was brand-new to me.

8 Q Let me point you to Exhibit -- I think Brent
9 marked it as Exhibit 25. I think these are the minutes, if
10 you have them --

11 A Right.

12 Q -- of the meeting of the board of directors. I'm
13 going to point you to a specific part of it.

14 A Mm-hmm.

15 Q It's the last page, "New Strategic Direction."
16 Tell me when you see this. I'll start reading.

17 A Okay. Good.

18 Q Okay. "Mr. Livingston then outlined the
19 objectives to achieve a successful initial coin offering."
20 Then it goes on from there.

21 A Mm-hmm.

22 Q Do you recall or does this help refresh your
23 recollection if people within Kik used the term initial coin
24 offering around this time?

25 A I don't recall specifically. But I -- I agree

Page 102

1 that that's what the minutes are reflecting.

2 Q That's fine. I don't need you to -- aside from

3 that, do you recall anyone at the time within Kik using the

4 term internet currency offering?

5 A I don't recall that. That -- I don't recall the

6 specific name that was being used at the time. I recall the

7 acronym ICO, and I may be assigning the wrong words to the

8 acronym.

9 Q That's just fine.

10 Has anyone ever instructed you to use the term

11 internet currency offering when describing the Kin offering?

12 A Not that I know of.

13 Q Okay. Has anyone ever instructed you not to use

14 the term initial coin offering in connection with --

15 A Not that I know of.

16 Q Okay. Pointing you to the last part of this

17 section -- and this reads, "After discussion, the board

18 voted (Mr. Holland dissented)" --

19 A Yes.

20 Q -- "to pursue the crypto currency strategy and to

21 support the proposed burn rate." I'll pause there.

22 A Yes.

23 Q Did you dissent?

24 A I did.

25 Q Why?

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1 A I, as I've said probably six times now, had never

2 really had any exposure to ICOs. And so, in making a

3 judgment as a board member of what the most conservative

4 path of the company would be, given that we were in a

5 situation where we had declining bank balance, then the

6 choice that I was encouraging the company just to go down

7 was to cut way back on the burn and continue to pursue an

8 M&A strategy. I thought that was a more conservative

9 strategy.

10 MR. SCHLEGELMILCH: Brent, before you move on to a

11 different document -- okay.

12 BY MR. SCHLEGELMILCH:

13 Q Unhelpfully, my version of this is paginated

14 differently. But can you look at the -- the board deck

15 exhibit, which is 14B.

16 A 14B. Yes.

17 Q And I have slides that aren't numbered.

18 MR. MITCHELL: It's -- it's the slide --

19 THE WITNESS: Yeah, yeah.

20 BY MR. SCHLEGELMILCH:

21 Q So the slide number 27 --

22 A All right. Yes.

23 Q -- what does this indicate? What does this chart

24 indicate?

25 A It is showing daily active users and monthly

Page 104

1 active users from the period of September 2016 to the period

2 of February 2017.

3 Q Okay. And it's -- 0.34 at the -- the beginning of

4 the chart on September 2016, and then it -- what is the

5 0.34?

6 A I don't know what that's making reference to

7 specifically. Typically, it's some metric associated with

8 users.

9 Q Okay.

10 A But I don't know what -- in this particular case,

11 what they mean by 0.34.

12 Q Okay. So is it fair to say that this chart is

13 indicating that between this time period, September 2006 to

14 February 2007, that daily active users and monthly active

15 users are declining --

16 A Over the --

17 Q -- at some rate?

18 A Over the period that you're describing, yes. It

19 indicates that they're declining at some rate.

20 And then, as I mentioned before, as you see here,

21 we

22 apparently were having an uptick just as we were coming into

23 this board meeting as you see the little tick there. That

24 happened from time to time.

25 Q I see. So in some shorter duration of time in

Page 105

1 February 2017, there was an uptick?

2 A Right. And that could've been related to a new

3 feature that was announced. It could've been related to

4 other housekeeping associated with a messaging platform.

5 There's actually a lot of work that goes on in the

6 background.

7 Q Okay. But over the six-month period that this

8 indicates, it's a general downward trend?

9 A Yes.

10 Q And then can you look at slide 42.

11 Well, let me just ask one other question about 27.

12 That's not a good thing, right, the general downward trend

13 of MAU/DAU?

14 A So I'm not trying to be clever.

15 Q I --

16 A Sometimes it doesn't matter. If you have an

17 acquirer that wants your strategic assets, they would look

18 at this and say, We're going to do something different

19 anyway.

20 Q Right.

21 A So in the case of some of the acquirers, it wasn't

22 terribly important. For me, as an owner of the company

23 effectively, then I certainly would want to see it go the

24 other way.

25 Q You'd rather have it go up than go down?

Page 106

1 A Correct.

2 Q Okay. Slide 42, it's the slide that's "Where Are

3 We Now?" Is that --

4 A What is -- I don't think I have it. Oh, sorry.

5 I'm looking at the wrong --

6 BY MR. MITCHELL:

7 Q If you look -- can you look at -- he's taking you

8 to the page that has a Bates No. 1633.

9 A Yeah. "Where Are We Now?" Right? Yep.

10 BY MR. SCHLEGELMILCH:

11 Q Yeah. I'm just trying to -- if you could, just

12 explain for the record, what does -- what does current

13 situation mean?

14 A It means exactly what it says. Here's where we

15 are now today.

16 Q The company's current financial information?

17 A That's what it's indicating.

18 Q Okay. And 23.8 million in cash?

19 A Yes.

20 Q What is that? Is that cash on hand? Cash -- what

21 does that mean?

22 A That's cash in the treasury of the company. Yes.

23 Q Okay.

24 A The bank balance, effectively, but yeah.

25 Q And 2.9 million normalized current burn, that's --

Page 107

1 is that how much money the company is spending per month or

2 some other --

3 A Per month.

4 Q -- duration?

5 A That's right.

6 Q Per month?

7 A That's correct.

8 Q I'm sorry. I spoke over your answer.

9 A Yes. It's 2.9 million a month burn rate,

10 normalized burn rate. That's what it's referring to. It is

11 a month. Yeah.

12 Q Okay. And runway to October 4, 2017, what does

13 that mean?

14 A That means if you multiply the current burn rate

15 by the cash, then we had until the 4th of October, 2017 in

16 that cash balance.

17 Q Okay. So at its current burn rate meaning its

18 current head count, its current expenses, is it fair to say

19 that Kik would effectively run out of money on October 4,

20 2017?

21 A With no changes, that's what it's indicating.

22 Q Okay.

23 MR. MITCHELL: We're going to go off the record.

24 THE VIDEOGRAPHER: Going off the record. The time

25 is now 11:53 a.m.

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1 (Recess.)

2 THE VIDEOGRAPHER: This begins disc No. 2. The

3 time on the video monitor is 12:02 p.m.

4 BY MR. MITCHELL:

5 Q Mr. Holland, I'm going to ask the same question

6 again.

7 A Yes.

8 Q During the break, did you have any substantive

9 conversations with the Staff about the case?

10 A I did not.

11 Q I'm going to give you what has been marked

12 previously as Exhibit 15B. Take a look at it. My question

13 is going to be, do you recognize the document?

14 For the record, the document is a multipage

15 document, Bates No. KIK_FOUNDATION_CAP_001669 to 1715. And,

16 on its face, on the front, it appears to be an e-mail from

17 Ted Livingston on February 17th, 2017.

18 A I -- I recognize the board deck, and I -- I

19 recognize the note.

20 Q Great. So the note you're touching, your hand is

21 -- is that the page that ends in 1670?

22 A Yes.

23 Q What is that?

24 A It is a -- it is, I would argue, a prequel or a

25 summary of some of the issues.

Page 109

1 Q Do you know who wrote it?

2 A I don't know -- I don't know with 100 percent

3 certainty. I could guess.

4 Q I'm not going to have you guess. Let me just have

5 you flip to the first page. Do you recognize what the first

6 page is?

7 A Yes. See the board deck attached from Ted

8 Livingston. Yeah.

9 Q Is this an e-mail from Ted Livingston?

10 A Yes, it is.

11 Q And does it go -- is it CC'd to Kik board?

12 A Yes.

13 Q And then in the third line of the e-mail, do you

14 see it says, "Please find my opening remarks for context"?

15 A Yes.

16 Q Does that refresh your recollection about who

17 wrote it?

18 A It would be Ted Livingston.

19 Q And does this -- father down, there's a

20 description in the third paragraph where it says -- sorry.

21 This is an e-mail on February 17th, right?

22 A Correct.

23 Q So it's the day after the meeting?

24 A Correct.

25 Q And it -- so Ted Livingston writes, "The executive

Page 110

1 team and I asked for three weeks to finish our evaluation of
 2 the viability of an initial coin offering, which is underway
 3 with CoinFund, as that would impact our head count
 4 recommendation. The board instructed us to assume that we
 5 would go for an ICO and to come back next week with a head
 6 count recommendation based on that assumption."
 7 Did I read that correctly?
 8 A Correct.
 9 Q Does that summarize fairly your memory of what
 10 happened at the meeting?
 11 A It does.
 12 Q Okay. I'll take that back from you.
 13 A Okay.
 14 Q I'll take 14 and 13 back.
 15 MR. SCHLEGELMILCH: One question.
 16 MR. MITCHELL: Yeah.
 17 BY MR. SCHLEGELMILCH:
 18 Q So you dissented from the vote --
 19 A Correct.
 20 Q -- on February 16th. We -- we talked about that.
 21 So I take it the board doesn't have to be
 22 unanimous
 23 to make a decision; is that right?
 24 A Correct, correct. Yes. The board does not have
 25 to be unanimous to make a decision.

Page 111

1 Q Okay.
 2 BY MR. MITCHELL:
 3 Q What happened after the meeting?
 4 A What do you mean, what happened?
 5 Q I don't -- what -- in terms of the -- your work
 6 with Kik and the Kin offering, what -- what -- after that
 7 meeting --
 8 A There was a continuation of work with the -- the
 9 management team and the consultant to come back with
 10 recommendations to the board.
 11 Q Did Ted Livingston reach out to you after the
 12 meeting to try to talk to you about it?
 13 A He did.
 14 Q What happened?
 15 A He was concerned because I dissented in the
 16 meeting. It was a new concept to him. He's a -- he's a
 17 young person and he's a young CEO, and I educated him on the
 18 concept, that there are in fact dissenting votes on boards
 19 all the time, and this just happened to be one of them.
 20 Q Did he give you any more information about the --
 21 about the plan?
 22 A I don't recall.
 23 Q Was there a subsequent board meeting after the --
 24 was there a board meeting after the February 16th meeting?
 25 A I mean, there have been a continuation of board

Page 112

1 meetings since then. Is that what you're asking, or, like,
 2 was it --
 3 Q Yes, sir.
 4 A Yes, yes.
 5 Q And then --
 6 A There are more -- but there were full -- there
 7 were more board meetings after February 16th, yes.
 8 Q So taking you to the -- after February 16th, what
 9 -- what -- when was the next board meeting?
 10 A I -- I don't recall exactly. I don't recall the
 11 exact date.
 12 Q I'm going to give you what was marked as Exhibit
 13 25, and I'm going to take you halfway down the page, again,
 14 just looking to refresh your recollection.
 15 Do you see there's a line that says, "The meeting
 16 of the board reconvened"?
 17 A Yes. I see the line. Yeah. February 23rd. Yep.
 18 Q Okay. So -- so, sorry. Was your dissent actually
 19 -- do you remember whether your dissent happened on the 16th
 20 or the 23rd?
 21 A I don't remember which -- which time.
 22 Q Okay. But, at one of those meetings, the board
 23 voted to sort of pursue a token strategy -- or pursue a --
 24 A To the best of my recollection, it was one of
 25 those meetings. But, yes, the board -- the board voted with

Page 113

1 my dissent to pursue -- but they -- an ICO.
 2 Q Okay. So then, after those meetings, you said
 3 there was more work that happened. Let me take it in parts.
 4 Did you introduce anyone -- did anyone else
 5 from Foundation Capital help Kik?
 6 A I -- when I -- when I -- when I knew that there
 7 was now -- this was the strategy that the board had adopted,
 8 I asked for more help from one of our junior partners
 9 Rodolfo Gonzalez, who was -- had better expertise than I did
 10 on the ICO market, if he would help review some of the --
 11 the -- effectively, the mechanics of the go-forward.
 12 Q And who does Mr. Gonzalez work for?
 13 A It's -- the -- the junior partners in the firm
 14 report to the general partners. There's not a direct kind
 15 of one-to-one relationship in that sense.
 16 Q Sorry. He works for Foundation Capital?
 17 A Correct. Sorry.
 18 Q Does he work for Kik?
 19 A He does not.
 20 Q And what did -- so you introduced Mr. Gonzalez.
 21 What -- was Mr. Gonzalez part of the -- sort of the work
 22 that happened after these February meetings?
 23 A I don't recall that he was part of the work that
 24 happened afterwards. I was asking him to help evaluate
 25 things and try to educate me further about what was going

Page 114

1 on.

2 Q And did he -- did he give advice to Kik, Mr.

3 Gonzalez?

4 A I don't recall him giving advice to Kik.

5 Q Did you want him to give advice to Kik?

6 A I didn't want him to do one thing or another. I

7 wanted him to -- to help educate me about the process since

8 the board had selected that as the strategic option.

9 Q And did Mr. Gonzalez -- did you -- were there any

10 -- were there any, like, questions that someone at Kik

11 raised that you answered by having Mr. Gonzalez answer them?

12 A I don't recall.

13 Q You don't recall that happening?

14 A No, I don't.

15 Q Then CoinFund. So what -- what -- I guess what --

16 what did CoinFund do during this -- during this sort of

17 after the February meeting period? What were they doing?

18 A As far as I know, they were continuing their

19 consulting assignment to advise the management and the board

20 on the ICO process.

21 Q And was there a point that you sort of got their

22 work or got their -- sort of their advice on the viability

23 of an ICO and the mechanics?

24 A I don't recall how I received the information,

25 whether I was advised during board meetings by management.

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1 I don't recall a specific meeting with CoinFund where

2 CoinFund gave me information.

3 Q I apologize. Seems that I have the wrong board

4 minutes.

5 A That's all right.

6 MR. MITCHELL: All right. We're going to -- we're

7 going to go off the record.

8 THE WITNESS: Okay.

9 THE VIDEOGRAPHER: Going off the record. The time

10 is now 12:12 p.m.

11 (Whereupon, at 12:12 p.m., the deposition in the

12 above-entitled matter was recessed, to reconvene at 1:16

13 p.m., this same day.)

14 AFTERNOON SESSION

15 (1:16 p.m.)

16 THE VIDEOGRAPHER: We are back on the record. The

17 time on the monitor is 1:16 p.m.

18 EXAMINATION BY COUNSEL

19 FOR THE SEC (RESUMED)

20 BY MR. MITCHELL:

21 Q Great. Mr. Holland, during the break, did you

22 have any substantive conversations about the case with the

23 Staff?

24 A No.

25 Q So when we -- before we broke for lunch, we were

Page 116

1 talking about things that have happened after the February

2 meeting.

3 A (Witness nods.)

4 Q I think you had said people did -- would -- would

5 -- well, what were people -- just sort of summarize again,

6 what were people doing after the February meetings?

7 A Going and doing additional work to come back and

8 advise the board.

9 Q Okay. And do -- do you remember whether you got

10 report -- a report back at a board meeting?

11 A I don't recall exactly how the -- the output of

12 that activity was delivered to me.

13 Q Sounds good. Sitting here now, do you think it

14 happened before -- do you have any memory of it happening

15 before a board meeting?

16 A I don't -- I don't know what the specific report

17 is, and I don't recall, like, what would've come in at what

18 time. It's hard for me to tell.

19 Q Sound goods. But do you remember -- I'm just,

20 like -- what I'm looking for is was there some conversation

21 in March between you and Ted Livingston or you and Peter

22 Heinke or anybody else at Kik, you know, sort of where they

23 gave you an update of here where were are -- where we are on

24 the research?

25 A I don't recall a specific one-on-one update. If

Page 117

1 there's a board meeting, then we would've had a board

2 meeting, and I would've gotten an update at the board with

3 our counsel, et cetera.

4 Q Great. So I'm going to give you then what's been

5 marked as Exhibit 16B. 16B is a multipage document with --

6 that starts with the Bates No. KIK_FOUNDATION_CAP_002028 to

7 2100. On its face, it appears to be an e-mail from Ted

8 Livingston on April 10th, 2017. Just --

9 A Yes.

10 Q -- take a look at it. I'm going to ask you, do

11 you recognize this document?

12 A I don't recognize the document.

13 Q Okay. Then if you -- can you look on the front,

14 the first page, the -- from Ted Livingston.

15 A Yes.

16 Q Is that --

17 A "Looking forward to our call." Yes. The meeting

18 was updated.

19 Q Is this an e-mail from Ted Livingston --

20 A It is.

21 Q -- to you and the rest of the board?

22 A Yes, it is.

23 Q Okay. And then, if you can just flip through the

24 rest of it, I'm looking to, again, sort of refresh your

25 recollection about what happened -- I mean, what -- there

Page 118

1 appears that there was a board meeting -- there was going to
 2 be a board meeting later that week, or there was a board
 3 meeting at some point?
 4 I'm just trying to figure out what -- what do you
 5 remember about sort of how you got -- how you learned about
 6 whatever work was being done by Kik and CoinFund?
 7 A I -- I don't remember the specifics of receiving
 8 this. I'm looking at it, the CoinFund token integration
 9 research, and I just don't recall -- I don't recall reading
 10 this at that time.
 11 Q Okay. Did -- do you remember that you got -- do
 12 you remember whether or not you got information from
 13 CoinFund or that CoinFund had collected?
 14 A I remember that, at board meetings, we would get
 15 updates from management on the work that they were doing
 16 with the consultant.
 17 Q And the consultant is CoinFund?
 18 A And the consultant is CoinFund, yeah.
 19 Q And did that color your view of, you know, what --
 20 what Kik should do -- sorry.
 21 Did the consultant's work help color your view of
 22 what Kik should do?
 23 A The reports -- the updates that we got from
 24 management with the help from a consultant educated me
 25 further on the ICO market.

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1 Q You relied on those reports?
 2 A I don't know how you would define "relied" because
 3 it was -- we got feedback, and we were told more about the
 4 process associated with it. I'm not really sure what
 5 "relied" means in that sense.
 6 Q Did you -- did you have an understanding of what
 7 the market was for these -- for an ICO?
 8 A We were -- we were -- I was taught what the market
 9 was in an ICO by management with the help of a consultant.
 10 Q Okay.
 11 BY MR. LEASURE:
 12 Q Pointing to Exhibit 16B, it appears that there was
 13 a -- some analysis and research done by CoinFund; is that
 14 right?
 15 A That's my understanding.
 16 Q Okay. Can I point you to -- I think there might
 17 be two attached -- two different documents by CoinFund here.
 18 I'm going to point you to the first one. It's dated March
 19 21st, 2017. Do you see that?
 20 A Yes.
 21 Q Okay. Let me point you to page 19 of that
 22 document. That ends in Bates stamp 2047. Tell me when
 23 you're there. It's titled crypto -- "CoinFund Crypto
 24 Investor Survey."
 25 A Yes.

Page 120

1 Q Do you see that?
 2 A Yes.
 3 Q Is it right that CoinFund conducted a survey of
 4 potential crypto investors?
 5 A I'm reading from the same document --
 6 Q Yeah.
 7 A -- that you have here, and I'm reading that that's
 8 what they did, and I have no reason to believe that that's
 9 not the case. I don't recall a specific survey in the way
 10 that you phrased the question.
 11 Q Fair enough.
 12 Was there discussion amongst you and others about
 13 the results of a survey that CoinFund conducted?
 14 A There were a series of interactions between the
 15 board, management, and then with -- with the assistance of
 16 CoinFund in terms of talking about the process around an
 17 ICO. Those interactions were then relayed to us during board
 18 meetings, and then discussion ensued.
 19 I -- I don't know if that answers your question,
 20 but
 21 that's the process that went -- went down.
 22 Q Totally helpful. Can you tell me anything about
 23 the discussion
 24 specifically with respect to -- to surveys of the -- of the
 25 crypto investor market?

Page 121

1 A I don't recall anything specific related to
 2 discussions as it relates to surveys of the crypto market --
 3 or the crypto investor market.
 4 Q Fair enough. So I'm just going to walk -- within
 5 that general
 6 answer, let me walk through some specifics.
 7 A Yeah.
 8 Q Do you remember you or any other board members
 9 disagreeing with the results of a survey conducted by
 10 CoinFund?
 11 A I -- I don't remember disagreeing or agreeing per
 12 se. I just don't remember a -- I don't remember a debate
 13 one way or the other about the feedback that we were getting
 14 from the consultant.
 15 Q Was -- and, again, I appreciate that you may not
 16 -- given your general answer, I'm asking some specifics
 17 here.
 18 A Yeah.
 19 Q I appreciate your patience.
 20 Do you remember any further research done that
 21 contradicted the results of CoinFund's survey of the market?
 22 A I -- I don't remember that.
 23 Q Okay. Let me point you to page 25 of this same
 24 document. It ends in Bates stamp 2053.
 25 A Yes.

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1 Q I'm going to read out the portion I'm -- I want to
2 point you to just so that we're on the same page. It says,
3 "User vs. Investor Interest."

4 A Mm-hmm.

5 Q "In this survey, we interviewed crypto investors
6 and expected that most respondents would be interested in
7 the investment side of the token proposition."

8 It then appears, if you're following me, to give
9 some percentage of people whether they would be -- would
10 forego a participation, lean towards being investors only,
11 or lean towards being users of the platform. Do you see
12 that?

13 A I see it.

14 Q Okay. Do you recall discussing these results with
15 anyone?

16 A I do not.

17 Q Do you recall any evidence or -- or surveys that
18 were out there that contradicted the findings as being
19 written up by CoinFund here?

20 A I don't recall that.

21 Q So to the best of your knowledge, do you have any
22 reason to think that this is -- that what CoinFund wrote
23 here is inaccurate?

24 A I don't have any reason to believe it's
25 inaccurate.

Page 124

1 A Not as a revenue event. I don't recall that
2 concept in that way.

3 Q Okay. Do you see where it says monetization
4 through pre-allocation?

5 A Yes.

6 Q Do you have an understanding of what that means?

7 A I do not.

8 Q What about in-app monetization?

9 A Yes. I -- yes, I do.

10 Q Yes, you do what?

11 A I understand how in-app monetization works.

12 Q Okay. Do you understand how that would work with
13 -- in conjunction with the Kin coin?

14 A I don't have a specific knowledge around that.
15 That would've been something that, you know, the company
16 would've then educated us about.

17 Q So let me just make sure I understand your
18 testimony. Is it that you don't have a memory one way or
19 the other about whether the Kin coin was a way of creating a
20 revenue event for Kin -- Kik Interactive or -- or that's
21 inconsistent with your memory?

22 A I don't recall -- I don't recall what you just
23 asked me. I don't recall that as being the discussion.

24 Q One way or the other?

25 A Correct.

Page 123

1 Q Okay. Thank you.

2 BY MR. SCHLEGELMILCH:

3 Q Can I just ask you a few questions looking at the
4 same document, specifically page 31 of that document.

5 And just for the record, it's -- the Bates number
6 is
7 002059. Are you with me?

8 A Yes.

9 Q Great.

10 A Yeah.

11 Q Token structure goals is at the top?

12 A Yes.

13 Q And it indicates that fundraising is one of the
14 token structure goals. Do you see that?

15 A Yes.

16 Q And monetization through pre-allocation, do you
17 see that?

18 A Yes.

19 Q Is it fair to say that one of the goals of a token
20 offering of Kin was to create revenue -- create a revenue
21 event for Kik Interactive?

22 A I -- I can only comment on what I'm seeing here.
23 I don't recall that discussion in the way you just phrased
24 it.

25 Q Do you recall that concept?

Page 125

1 BY MR. MITCHELL:

2 Q Was there discussion of it as being a capital-
3 raising event?

4 A I don't recall it in that way. I recall it in the
5 way I described to you earlier, around the -- creating the
6 ecosystem for the -- for the Kin Foundation.

7 Q So the way you recall it -- the way you understand
8 the -- the --

9 A Because -- -- because it's now a year later, and
10 -- and I just don't have a separate memory of it at this
11 point in time from there. Again, I'd never been through one
12 of these. I'm just sitting there hearing about this stuff
13 for the first time and trying to absorb it, so --

14 Q Sorry. So sitting here today, who do you think
15 received the capital that was obtained when the Kin tokens
16 were sold?

17 A The Kin Foundation and Kik.

18 Q And how much do you think went to the Kin
19 Foundation?

20 A I believe there was a formula. I don't know the
21 exact formula associated with it but I believe it was the
22 majority.

23 Q The majority of the capital that was raised?

24 A I believe so.

25 Q Okay. And who -- how did you learn about that

Page 126

1 formula?

2 A That was discussed in subsequent board meetings.

3 Q By who?

4 A By management.

5 Q And they -- so management told you that a majority

6 of the money raised in the sale of Kin tokens would go to

7 the foundation?

8 A I don't recall exactly the language you just used

9 around it. I just simply recall there was a formula

10 associated with what would go to sort of the Kin Foundation

11 to help build the community and then what would go to help

12 with the infrastructure associated with supporting the

13 community through the Kik infrastructure, and that there was

14 a formula arranged around that. I just don't recall what it

15 was, but I recall it as an output of this process.

16 Q And if you were to find out that the Kik -- that

17 the Kin Ecosystem Foundation got no dollars or ether that

18 were raised during the sale, would that surprise you?

19 A It would surprise me if you said at the end of the

20 day, that was the occurrence, meaning that once all the

21 plans and everything were laid out and occupied -- or

22 instituted -- implemented, I would be surprised by that but

23 --

24 Q So let me just pick a date.

25 A Yeah.

Page 127

1 Q A couple days after the public sale happened, say,

2 October 2017 -- by October 2017, the sale was done; is that

3 right?

4 A I don't know that actually.

5 Q So let's say --

6 A If you -- if you stipulate that it was done --

7 Q Let's just pick a date.

8 A -- I'm not going to -- I'm not going to debate

9 you, so --

10 Q Sounds good.

11 Ten days after the sale was done --

12 A Right.

13 Q If by that time the Kin Ecosystem Foundation had

14 gotten zero dollars and zero ether, would that surprise you?

15 A No, it would not.

16 Q Okay. When do you think they got the -- do you

17 think the Kin Ecosystem Foundation got ether or dollars?

18 A The Kin Foundation, it needed to be set up and

19 implemented and so forth. And I just don't know the timing

20 associated with that.

21 Q Okay.

22 A So I don't think it was ready ten days after the

23 offering.

24 Q So today.

25 A Yeah. I don't know the status of it today.

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1 Q But if I -- if you learned that today, the Kin

2 Ecosystem Foundation had received no dollars and no ether

3 that were raised during the sale of the Kin tokens, would

4 that surprise you?

5 A Not particularly, no.

6 Q Why not?

7 A Because I don't know enough about the time frames

8 associated with how it has to be set up and how the -- it is

9 organized. I just know what the intent was so --

10 Q What was the intent again? I'm sorry.

11 A The intent was to fund the foundation and help

12 create the community.

13 Q That the intent was that the foundation would get

14 some of the -- some of the cash or ether that was raised?

15 A That was my understanding.

16 BY MR. SCHLEGELMILCH:

17 Q One question.

18 From an accounting perspective, do you know how

19 Kik

20 Interactive booked the -- what I'll call the revenue that

21 came in from the coin offering?

22 A I don't. No.

23 BY MR. MITCHELL:

24 Q So we've talked about CoinFund. Did Kik hire

25 anyone else to assist with the Kin project?

Page 129

1 A I don't know.

2 Q Have you ever heard of a company called CoinTree?

3 A I've heard of CoinTree.

4 Q Who is CoinTree?

5 A I don't know who CoinTree is in relation to

6 CoinFund.

7 Q What -- sorry. Did Kik hire CoinTree?

8 A I don't know.

9 Q Did CoinTree work for Kik?

10 A I don't know.

11 Q Okay. So we just -- we sort of, we were talking

12 about a time frame after that February meeting. Was there a

13 point -- was there a point in time where -- where management

14 came back and sort of had a plan for -- to actually do an

15 offering?

16 A Yes.

17 Q All right. And so tell us about that. How did

18 you -- how did you learn about that?

19 A The management and consultant had gone back and

20 done the work associated with the mechanics of what an

21 offering would be and had come back and reported to the

22 board.

23 Q Do you remember when that was?

24 A I mean, I don't remember the specific date of the

25 board meeting. No, I don't.

Page 130

1 (SEC Exhibit No. 46 was marked for
2 identification.)
3 BY MR. MITCHELL:
4 Q I'm going to give you what I've just marked as
5 Exhibit 46.
6 A Okay.
7 Q And I'm going to hand -- I have two other copies.
8 So I'm going to hand one to Grant.
9 MR. FONDO: Thank you.
10 MR. MITCHELL: And I'll hand one -- and --
11 BY MR. MITCHELL:
12 Q Okay. Can you look at Exhibit 46 for me.
13 A Yes.
14 Q On its -- it's a multipage document. On its face,
15 it says Quick -- "Kik and Crypto Currency April 2017"?
16 A Yes.
17 Q And has a Bates No. KIK_FOUNDATION_CAP_002087
18 through 2100?
19 A Yes.
20 MR. MITCHELL: I apologize. Is this the same as
21 -- I just figured it out.
22 BY MR. MITCHELL:
23 Q Tell you what. I'm going to give you back -- can
24 you look at 16.
25 A Sure. Yeah.

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1 MR. FONDO: 16B or --
2 MR. MITCHELL: 16B.
3 BY MR. MITCHELL:
4 Q Just look at the -- flip. It has -- this is --
5 what was marked as Exhibit 46 is a piece of that.
6 A Okay.
7 Q Look all the way at 2087, all the way back at the
8 -- the Bates No. 2087.
9 A Yeah, yeah. Got it.
10 Q You were just saying that you got some kind of
11 report back. And I'm just going to show you a couple of
12 documents.
13 Is this what you were talking about?
14 A I don't recall what I got back in that time
15 period. This looks generally familiar to me in terms of the
16 board deck from around that time period. But I don't -- I
17 -- you know, I don't recall the specific pieces.
18 Q Okay. So does the part that's from 2087 to the
19 end, is that a board deck for an April meeting of the board?
20 A I don't know that. I'm reading from it here. It
21 says April 2017, and I'm going to the next page. And so my
22 operating assumption would be -- I have no reason to believe
23 it's not an April '17 update.
24 Q Sure. So I'm going to give you -- I'll put that
25 one down and I'll give you 17B.

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1 A Okay.
2 Q This is an April -- May 4th e-mail from Ted
3 Livingston to the board with a Bates stamp
4 KIK_FOUNDATION_CAP_005910 through 5961.
5 First question is going to be do you recognize the
6 document?
7 A I recognize it as a board deck from Kik.
8 Q This is an e-mail and a board deck that you got
9 from Ted Livingston in early May 2017?
10 A I have no reason to believe I wouldn't have gotten
11 this. It's applied -- it's sent to the board, and I
12 would've been on the board alias.
13 Q Okay. This -- this appears on the second page.
14 It says, "Board Meeting May 5th, 2017"?
15 A Right.
16 Q And so what I wanted you to sort of understand --
17 so sort of as of this time, what's the -- what was the
18 discussion about what to do -- how to -- what the company
19 would -- was doing around the Kin token offering?
20 A I would have to read from the agenda to -- to
21 refresh my memory of what was discussed at that meeting
22 versus any other meeting. And I'm on the agenda page, 5913,
23 where it mentions administrative operational update in
24 executive session.
25 Q Okay. Separate from the document, do you have any

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1 -- do you remember what the discussion was around this time?
2 I'll try to give you this to use as a --
3 A I don't recall the specific discussion at this
4 specific board meeting.
5 Q Okay. Can you just turn to a page -- there's a
6 page that ends in 5923 -- or 5921.
7 A 5921.
8 Q So 5920 says Operational Update, and then 5921
9 says Product Process.
10 A Right, right.
11 Q And then 5922 says, "We have all the pieces to
12 build the world's best chat community."
13 Do you see that?
14 A Yes.
15 Q What is the product that -- if you could just look
16 through that, is the product being discussed on these slides
17 -- is that a -- what product is -- are they discussing here?
18 A I don't know which product they're discussing vis-
19 a-vis the other products that we have.
20 Q Is it -- but is it a chat product, or is this
21 talking about the Kin token?
22 A I don't know.
23 Q And, if you could switch to 5925, do you see
24 there's a heading that says "Crypto Currency"? Can you look
25 at sort of the next one, two, three --

Page 134

1 A Right.

2 Q Just sort of look through -- just flip through

3 that section. I'm -- again, I'm just trying to hopefully

4 refresh your recollection about what happened at the

5 meeting.

6 A Yep. I'm reading the vision and step 1, step 2.

7 Q Tell me when you've had a chance to look through

8 it.

9 A Yeah.

10 Q What -- what -- so this is a -- appears to be a

11 discussion about a token. What -- doing it, what do you --

12 what did -- what did the board tell you? Sorry. What did

13 management tell you about what the plan was, what they

14 wanted to do, such?

15 A They walked through the steps that are here to

16 indicate how they would launch the token and create the

17 community.

18 Q And there were four steps that they discussed?

19 A Again, I'm looking at the same piece of paper you

20 are, and it says step 1, step 2, step 3, step 4. I don't

21 recall us going through it in this level of detail, but I

22 have no reason to believe that that's not -- that isn't the

23 case.

24 Q Okay. So let me take you to the page that's 5928

25 where it says step 1. Do you see that?

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1 A Yes.

2 Q So what is this -- what did this show?

3 A Step 1 states, "Create a new crypto currency with

4 10 trillion coins."

5 Q And who -- who was getting the coins?

6 A As of this document, 10 percent to users given

7 away, 20 percent to Kik, 30 percent to investors on certain

8 time periods, and 40 percent to community builders.

9 MR. FONDO: So, Brent, are you asking him on his

10 recollection or just to read the document?

11 THE WITNESS: I don't recall this. I'm just

12 reading the document to be honest, so --

13 MR. FONDO: Just -- just focus on his questions.

14 THE WITNESS: Yeah. So I don't recall -- I don't

15 recall the specifics of this without looking at this

16 document.

17 BY MR. MITCHELL:

18 Q Sure. Did -- did someone from Kik management tell

19 you that 30 percent of the coins would go to investors?

20 A That appears to be the case based on this. I

21 don't recall somebody looking at me the way you just did and

22 saying 30 percent of the coins go to investors. I just

23 don't recall.

24 Q So step 2 says build -- sorry. Next page, 5929,

25 step 2, "Build an economy inside Kik to the -- give the

Page 136

1 crypto currency value."

2 A (Witness nods.)

3 Q So what -- what was this about?

4 A This was the recommendation of management coming

5 back to the board in terms of what, in this case, step 2

6 represented. It's -- it's not an area that I have expertise

7 in so I sat and listened.

8 Q Okay. But were they -- what is your understanding

9 of what they meant by build an economy inside Kik?

10 A I didn't have an understanding of what that meant

11 within this construct because I'd never been through this

12 process before.

13 Q Okay.

14 BY MR. MURTHA:

15 Q Do you have an understanding today?

16 A I have a better understanding today of the notion

17 of the foundation and how that would work in interacting

18 with Kik. I didn't understand it at the time.

19 Q Can you tell us about your understanding today.

20 A It's the same that I mentioned before. I can

21 repeat it. It's the same one.

22 BY MR. MITCHELL:

23 Q I guess I'm not sure -- I don't -- I'm not sure

24 what we're talking about. What do you mean? Repeat it. I

25 don't understand your answer.

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1 A Could you repeat the question?

2 BY MR. MURTHA:

3 Q Sure. You said you don't -- at the time, you

4 didn't have an understanding of what it meant to build an

5 economy inside of Kik. And then I had asked you, Do you

6 have an understanding today? And you said yes.

7 A Yeah.

8 Q And I said --

9 A Yeah.

10 Q -- Can tell us about that?

11 A Let me -- let me correct myself.

12 I have an understanding more of how the process

13 would work today, not about how to build an economy inside

14 of Kik, because that's not the way I would describe it

15 today.

16 I would describe it as building the ecosystem

17 around

18 the Kin Foundation with the community, which is what I've

19 learned over that time period. So I don't -- I wouldn't

20 phrase it in the way that

21 you did in your question because I don't think of it as

22 building an economy inside of Kik.

23 BY MR. MITCHELL:

24 Q When did that change?

25 A I'm not sure when it changed. I'm just simply

Page 138

1 telling you when my education began to kick in around this
2 process was over a period of, you know, 9 to 18 months as we
3 were going through this.

4 Q Sure. So was there some point where people at Kik
5 said they were not going to build an economy inside Kik?

6 A I don't know. I just don't know.

7 Q Did anyone ever tell you that, that they weren't
8 going to do this?

9 A Nope. No, they didn't.

10 Q So what -- what -- tell me -- I don't understand.
11 What -- what's the education you're describing?

12 A The education was there were -- in any kind of new
13 product launch or anything else, there are later
14 developments to it. And so, in the early stages of it,
15 things get referred one way, and then, as time goes by and
16 people get a better understanding of it, it gets referred to
17 another way.

18 So, in my mind, I look at this as more like a
19 discussion of a beta product. And, in a discussion of a
20 beta product, there's often language used that later becomes
21 more sophisticated or more nuanced.

22 So when I look at this and you say was I aware
23 that
24 we were talking about building an economy inside Kik, I just
25 didn't think of it that way.

Page 139

1 BY MR. LEASURE:

2 Q So to make sure I understand, did people change
3 the way they talked about the Kin project --

4 A It's not that people changed the way they talked
5 about the Kin project.

6 Start-ups have language they use when they're
7 developing new products. And those -- that -- those
8 language -- that language becomes more nuanced and
9 sophisticated as the product gets developed.

10 Q I understand that.

11 A Netflix was "DVD by mail."

12 Q I remember that.

13 A But it was never "DVD by mail."

14 Q Right. Of course. Right. And I loved the DVDs
15 by mail back in the day.

16 But specific to --

17 A So if you look at a Netflix board book from 1999,
18 it wouldn't look very similar to what you would see today.

19 Q Of course. So the language changes as the project
20 changes, right?

21 A Yes. As -- as more learning occurs.

22 Q Were there any reasons other than project
23 development and business development that the language used
24 to discuss the Kin offering changed over time?

25 A Not that I know of.

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1 Q Were concerns about possible treatment under US
2 securities laws a factor in language changing over time?

3 MR. FONDO: So let me just caution you.

4 THE WITNESS: Sure.

5 MR. FONDO: If you don't know the answer, you just
6 respond. Otherwise, I would caution you that anything you
7 did learn from counsel would be privileged.

8 THE WITNESS: So, throughout the process of doing
9 this, we were in communication with counsel and received
10 advice from counsel. So there's a chance that your question
11 would get into areas of privilege.

12 BY MR. LEASURE:

13 Q Okay. So -- go ahead.

14 Did language used to describe the Kin offering
15 change as a result of communications with counsel?

16 MR. FONDO: So --

17 THE WITNESS: I just -- I can't answer that
18 question without talking about communications with
19 counsel.

20 MR. LEASURE: Could we answer yes or no or not?

21 MR. MITCHELL: Yeah.

22 MR. FONDO: No. I think -- because I think you're
23 providing legal advice.

24 BY MR. SCHLEGELMILCH:

25 Q Okay. I think, overall, we're not asking you to

Page 141

1 waive the -- the privilege.

2 A Right.

3 Q It's yours. It's Kik's. It's not ours. But we
4 are going to ask probably a series of questions, probably
5 for the balance of the day, that may delve into you having
6 an answer that -- that relates to the privilege or that is
7 affected by the privilege.

8 We're not trying to delve into that. We just need
9 to know where the edges are of the privilege. And the
10 questions that we're asking, we're asking them because the
11 answers are relevant to our investigation.

12 A Right.

13 Q And so we're not -- we're not just nosy. We're
14 not just trying -- we're not -- it's not just idle
15 curiosity. We're asking these questions because they're
16 relevant. And the invocation is also relevant. So we're
17 just trying to find out where the hard edges are of the
18 privilege, and we're not trying to go beyond that, but we
19 can't figure out where those hard edges are without asking
20 questions.

21 A Right.

22 Q So you should do whatever you need to do to
23 protect the privilege. And we're going to trust that you
24 and your very able counsel can do that, but we're going to
25 just continue to ask these questions. And we don't mean

Page 142

1 anything by them.

2 A Right.

3 Q We're just trying to ask questions that are

4 relevant to our investigation to push it forward.

5 A Right.

6 MR. MITCHELL: Jeff, I think you asked a yes or no

7 question. Can you ask that again.

8 MR. LEASURE: Sure. And we'll let counsel respond

9 as -- as they see fit.

10 BY MR. LEASURE:

11 Q Yes or no, did the language used to describe the

12 Kin offering change in part as a result of communications

13 with counsel?

14 A And I cannot answer that question.

15 MR. FONDO: Well, let me -- can we take a break

16 for a second?

17 MR. MITCHELL: Oh, of course. We're going to go

18 off the record.

19 THE VIDEOGRAPHER: Going off the video record.

20 The time is 1:47 p.m.

21 (Recess.)

22 THE VIDEOGRAPHER: We are back on the record. The

23 video monitor time is 1:56 p.m.

24 MR. FONDO: So what I would ask as we go through

25 this, I would ask whether he has a recollection of

Page 143

1 something. I think he got confused, to some -- to some

2 extent, about the question. So it very -- I suspect that as

3 you go through this, he may not have a recollection one way

4 or the other. So when you ask something as a yes or no,

5 it's not always -- he's not always going to be able to

6 answer it.

7 You look confused by that.

8 MR. SCHLEGELMILCH: That's his standard look.

9 MR. MURTHA: It just seems inconsistent with what

10 his answers to the previous questions were, that he did seem

11 to have a --

12 THE WITNESS: So perhaps you should maybe go

13 through this --

14 MR. MURTHA: Why don't we just have -- why don't

15 we just have Angela read that.

16 MR. FONDO: Can I ask --

17 MR. MURTHA: -- last question back.

18 MR. FONDO: Can I ask what you think is

19 inconsistent?

20 MR. MITCHELL: Yeah. I don't want to do this. I

21 want to get answers out of him. We've got limited time.

22 MR. MURTHA: Okay. Go ahead.

23 MR. MITCHELL: Let's go through this.

24 So can you -- can read back Jeff's question from

25 before.

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1 (Record read.)

2 THE WITNESS: And I don't recall.

3 BY MR. LEASURE:

4 Q You don't recall either way?

5 A No, I don't recall either way.

6 BY MR. MITCHELL:

7 Q Do you recall -- that's fine.

8 Okay. Can I take you to the page that

9 ends

10 5932. At the top of the page, it says, "Risks."

11 A Yes.

12 Q What was the discussion about risks?

13 A I'm reading from this document because I don't

14 recall the discussion specifically, but it says risks,

15 security law, accepting funds through token sale, and money

16 transmission law.

17 Q Do you remember anything about the conversation in

18 the meeting about this?

19 A I recall that there was a conversation around

20 these topics. I don't remember it specifically.

21 Q Was there a conversation in this meeting about the

22 Howey Test?

23 MR. FONDO: So let me -- so are you asking with

24 his counsel or without counsel present?

25 BY MR. MITCHELL:

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1 Q I'm just asking in the meeting, was there a

2 conversation about the Howey Test?

3 A I don't recall the conversation about the Howey

4 Test. I had to read up to understand what the Howey Test

5 was.

6 So I don't recall a conversation about the Howey

7 Test. I'm not telling you it didn't happen. I just don't

8 recall.

9 Q When did you read up on it?

10 A In the last week or so when I read Secretary --

11 I'm sorry -- I'm going to get the terminology right --

12 Commissioner Inman's statement around ether, so --

13 Q Okay. So I'm going to take you to the page that

14 says 5933.

15 A (Witness nods.)

16 Q At the top, it says "Securities Laws." Do you see

17 that?

18 A 5933. Yes.

19 Q I'm just going to read. It says, "A key variable

20 in the Howey Test is that the token already has utility in

21 market before the token sale." Do you see that?

22 A Yes.

23 Q Is that a subject that people discussed at the

24 meeting?

25 A I don't recall that subject being discussed at the

Page 146

1 meeting.

2 Q Okay.

3 A I'm not saying it didn't happen. I just don't

4 recall it.

5 Q What does the term utility in -- already -- that

6 the token already has utility in market mean to you?

7 A I didn't understand the concepts behind this in

8 the time it was being discussed. It was my first experience

9 around an ICO, so I was listening to people discuss

10 concepts.

11 Q Okay. Do you have an understanding now of what it

12 means for a token to have utility in market?

13 A I have a better understanding of it. But I would

14 not say I'm an expert at it.

15 Q What's your understanding?

16 A That -- that you have a token, and that token has

17 utility in the community that it's being used.

18 Q What does utility mean?

19 A It could be used to help purchase things. It

20 could be used to help support projects themselves, so --

21 Q How would a -- what do you mean, support projects?

22 A In the -- in the example I cited before of a, you

23 know, advertising-free browser, people who wanted to see an

24 advertising-free browser could buy the token to support the

25 project.

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1 Q And so your understanding is as long as buying the

2 token supports the project, then that key variable in the

3 Howey Test is met?

4 A I have no idea. What you just said makes no sense

5 to me whatsoever.

6 Q Okay.

7 A I'm not an attorney. I'm not an expert in ICOs,

8 so --

9 Q Well, based on your time on the board of Kik

10 before and after the \$100 million offering, what was your

11 understanding of what a token having utility in market would

12 mean?

13 A I -- at the time that this was being discussed, I

14 was learning all these concepts for the very first time.

15 Q Was --

16 A I was hearing them for the first time.

17 Q Was there a time that you understood them?

18 A Over time, I began to understand them better. I

19 would not say I'm an expert in ICOs.

20 Q Okay.

21 A I think that's becoming apparent.

22 Q But I'm just trying to understand what your

23 understanding was of what this term means. So today, what's

24 your understanding?

25 A I literally just explained it. And I have

Page 148

1 explained it three times --

2 Q Okay.

3 A -- using the advertising-free browser as a -- as a

4 metaphor for it. That's my understanding of it.

5 Q So just to -- I want to make sure I understand.

6 If someone -- if the -- if selling the token

7 supports the advertising-free browser, then that -- then

8 that token has a utility in the market?

9 A I don't know that as a fact because I'm not an

10 expert in this area. You're asking my opinion around that.

11 In my opinion, that sounds right. I'm not an expert in the

12 area so I don't know that as a fact.

13 Q What's the basis of your opinion?

14 A Just over time, getting more and more exposure to

15 tokens and the concept around ICOs.

16 Q From whom?

17 A From the popular literature and from all of the

18 different ICOs that have occurred in the last three years.

19 Q Anything else?

20 A And -- and my exposure through the activities in

21 Kik.

22 Q And what activities at Kik?

23 A Board meetings where we have discussions around

24 concepts associated with an ICO.

25 Q Okay. So what were the discussions around this

Page 149

1 concept?

2 A I don't recall the discussions specific to this

3 concept.

4 Q Okay.

5 BY MR. SCHLEGELMILCH:

6 Q Do you recall generally that -- that the concept

7 of utility was important in a coin offering?

8 A I recall the concept of utility being discussed.

9 I don't recall the construct of that discussion, whether

10 that was our -- whether that was in the course of -- of

11 receiving advice from counsel around how you understood

12 these things. I just don't remember the details of it.

13 And, again, I was getting a, you know, sort of Ph.D. in ICOs

14 on the spot, so --

15 MR. FONDO: So I want to also caution you to the

16 extent any of these questions relate to information that you

17 learned from counsel --

18 THE WITNESS: Right.

19 MR. FONDO: -- to stop --

20 THE WITNESS: Yeah. Right.

21 MR. FONDO: -- and advise everyone of that. So --

22 okay?

23 THE WITNESS: Yes. Well, I -- sorry. I thought I

24 already answered that earlier, that these -- when these

25 topics came up, they came up within the context of our

Page 150

1 attorney advising us as a board. So I thought -- I was
 2 trying to be as helpful as I can. I thought earlier the
 3 notion was that that wasn't helpful, so I'm just trying to,
 4 like, be as helpful as I can for you guys.

5 MR. FONDO: I don't think -- I don't -- nobody
 6 wants you to waive the privilege here.

7 THE WITNESS: Right.

8 MR. FONDO: And you're not being asked to. So to
 9 the extent anything was -- and -- and if you're unsure, we
 10 can take a break and talk about it.

11 THE WITNESS: No. That's okay. No worries.
 12 The specific question, if I understand the
 13 question
 14 you're asking, was within the topic area of what we were --
 15 talked about with our attorney with the board. So I believe
 16 I'd be violating privilege.

17 BY MR. SCHLEGELMILCH:

18 Q Okay. Let me just ask the question then to make
 19 sure I understand what you're saying with respect to the
 20 privilege.

21 Do you recall utility as a concept being
 22 discussed as being an important thing, that the coin
 23 offering have utility?

24 A I recall utility --

25 MR. FONDO: Sorry. Hold on one second.

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1 THE WITNESS: Sorry.

2 MR. FONDO: So are you asking outside of counsel?
 3 Because I don't think he can --

4 MR. SCHLEGELMILCH: I am asking at whatever board
 5 meetings he was present at. That's -- that's my question.

6 MR. FONDO: Okay.

7 MR. SCHLEGELMILCH: Whether counsel was there or
 8 counsel wasn't there, he's the only one that knows the
 9 answer to that question. So my question has to do -- my
 10 question is focused on his discussion with this issue at
 11 board meetings.

12 THE WITNESS: Utility was discussed with counsel
 13 at board meetings.

14 BY MR. SCHLEGELMILCH:

15 Q Okay. And I'll -- I'll just -- I'll ask, and you
 16 can do whatever you need to do.

17 What do you recall the specifics of those
 18 conversations regarding utility to be?

19 MR. FONDO: So I instruct the witness -- if that's
 20 based on conversations with counsel, I instruct you not to
 21 answer.

22 THE WITNESS: It's literally based on
 23 conversations with counsel. It's impossible for me to
 24 answer without --

25 MR. SCHLEGELMILCH: That's fine. I'm not hurt by

Page 152

1 the answer. I just need to know what the answer is.

2 THE WITNESS: Right.

3 MR. SCHLEGELMILCH: And if you're instructing not
 4 to answer, so be it.

5 I just need to know where the lines are being
 6 drawn. I'm not hurt.

7 BY MR. LEASURE:

8 Q What's an MVP?

9 A A -- oh, God.

10 Q So many acronyms.

11 A That's a -- that's a term I use all the time. And
 12 you're asking me when I'm trying to, like, get my head
 13 around the other stuff.

14 I'd say it's a minimum viable product.

15 Q What's --

16 A It's a term used in the start-up community that's
 17 hotly debated, but yeah.

18 Q So that's not a term limited to the ICO space?

19 A Correct.

20 Q What does it mean in the start-up?

21 A It means that -- I mean, I'll use mildly technical
 22 terms. But let's say you're going to create a new
 23 application, and you're going to create what's known as a
 24 wire frame. So a wire frame basically simulates what the
 25 application will look like and what the utility of the

Page 153

1 application is going to be. It gets you to the point where
 2 it's enough that you can understand what it would be like to
 3 use it, and then you can begin to start to interact with it.

4 That's a minimum viable product. That gets you
 5 started, basically.

6 Q In the -- in that general context in the start-up
 7 world, is an MVP product necessarily ready to go to market
 8 and be sold?

9 A You'd be surprised at how many MVP products are
 10 the products you're using today.

11 Q Really?

12 A Yes.

13 Q So MVP does -- does -- in that context of start-up
 14 world, does MVP necessarily mean it is or isn't ready to be
 15 sold to consumers?

16 A It doesn't always mean it one way or the other.
 17 The implication is that it's an early version of the
 18 product. I think that's a fair characterization of it.

19 Q And then in connection to the ICO world, does it
 20 have a different or additional meaning, to your knowledge?

21 A I don't -- I don't have any knowledge of that. It
 22 strikes me that it doesn't seem that it would be any
 23 different, but I don't know.

24 BY MR. MITCHELL:

25 Q So in your experience, sometimes -- sometimes a

Page 154

1 MVP actually turns out to be a product that people want to
 2 buy?
 3 A Yes.
 4 Q And sometimes an MVP is --
 5 A Is -- is a nice --
 6 Q -- is a product --
 7 A -- is a nice try.
 8 Q It's a nice try. It's a product that people don't
 9 want to buy?
 10 A Or that it's not ready.
 11 Q So sometimes an MVP is created, and that turns out
 12 to be something that the public doesn't want to buy then?
 13 A So I -- I would agree with everything you said
 14 except for the last phrase, because you don't know yet. It
 15 could be everything the public wants except one feature.
 16 Q Sure.
 17 A And then when that one feature comes in, then, all
 18 of the sudden, the public loves it.
 19 Q But there are times where people create an MVP --
 20 A Right.
 21 Q -- and then, later on, they have to do more work
 22 to reach the --
 23 A They have to --
 24 Q -- goal line?
 25 A -- iterate. Yes.

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1 Q Iterate means to sort of make changes --
 2 A Right.
 3 Q -- to the product?
 4 A To continue to improve it.
 5 Q And you have to iterate past the MVP to get to the
 6 point where the product -- where the public wants to buy the
 7 product?
 8 A Again, I'm just -- I'm not trying to be an ass
 9 about it. I'm being careful about how I answer the
 10 question.
 11 There are developers who are so good that -- you
 12 know, Reed Hastings with Pure Software was so good the MVP
 13 took the company public.
 14 Q But sometimes the -- in this world, the MVP isn't
 15 enough, and the company needs to iterate more to get to the
 16 point where it has a product that people want?
 17 A Again, everything but "in this world" that you
 18 mentioned. In the world of start-ups, yes. Right.
 19 Q Okay. So I'm just going to point you to the rest
 20 of that page that has Securities laws at the top. Did Kik
 21 management outline two options to the board at that meeting?
 22 A I don't recall how the options were outlined. I
 23 can -- I can look at the same piece of paper you can, but I
 24 --
 25 Q Okay.

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1 A -- don't recall how the options were outlined.
 2 Q Well, look at the second -- there are two options
 3 on that page. And then it says -- option 2 is, 2, Sell to a
 4 credit investor until token is instrumented. At that point,
 5 do crowd sale.
 6 Do you remember a conversation about that subject?
 7 A I don't particularly remember that.
 8 Q Looking at it now, what does it mean? What does
 9 "until the token is instrumented" mean to you?
 10 A I don't know how that applies in the case of an
 11 ICO.
 12 Q What does "instrumented" mean to you?
 13 A "Instrumented" means -- in the case of a software
 14 development tool, "instrumented" means that you actually
 15 create the capability for it to run at runtime. That's what
 16 instrumentation means in that context.
 17 Q I apologize. I don't know what run at runtime
 18 means.
 19 A It means that -- something you would use versus
 20 something that a developer might use.
 21 Q Is that meaning a developer versus the general
 22 public, you mean?
 23 A It depends. It's -- I mean, I'm not trying to be
 24 vague.
 25 Q No. Yeah. I understand. Right.

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1 A It's just sometimes -- sometimes, you could end up
 2 with 10,000 people using something, and it's still not the,
 3 what we call FCS, which is first customer ship. So that's
 4 another terminology.
 5 So there's -- there's an entire methodology here
 6 called "The Lean Startup" that explains all of the different
 7 phases that you go through, and everybody uses it a little
 8 bit differently.
 9 Q Okay. And then there's a line that says
 10 "Actions." Did the Kik management discuss two actions or
 11 possible actions or something with the board?
 12 A I don't recall the specific discussion. Again,
 13 I'm -- I'm reading the same thing that you are here.
 14 MR. FONDO: So just to -- they don't want you to
 15 read.
 16 THE WITNESS: Yeah.
 17 MR. FONDO: Just answer. If you remember, you
 18 remember. Otherwise --
 19 THE WITNESS: I just don't -- yeah. I don't
 20 remember.
 21 MR. FONDO: If they want you to read, they'll ask
 22 you to read.
 23 THE WITNESS: Okay. Fair enough. Sure.
 24 BY MR. LEASURE:
 25 Q So on the -- let me just give you my impressions

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1 from the options I'm seeing and see if it is consistent with
2 any recollection you have.

3 It seems like in between the options, there's the
4 possibility of doing a crowd sale before the token has
5 utility in market, whatever that means -- we talked about
6 those terms -- versus maybe waiting and selling -- you know,
7 selling later in time.

8 A (Witness nods.)

9 Q Do you see there's a reference to missing wave of
10 excitement under that latter option?

11 A I'm reading the same thing that you -- I don't
12 remember that discussion.

13 Q Yeah. And so -- but leaving aside this particular
14 board meeting -- and, again, as your counsel ably
15 instructed, we don't -- we don't need you just to read the
16 words. We're looking for what you remember.

17 A Right.

18 Q As a member of the Kik board, do you remember in
19 2017 some tension between a goal of building a full product
20 versus getting out to the market as soon as possible?

21 A I do not remember that.

22 Q Do you remember any discussion about a waive of
23 excitement in the crypto space?

24 A I don't remember the waive of excitement
25 discussion.

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1 into this market -- would those drivers have been Fred

2 Wilson and Ted Livingston?

3 A I don't know. I can't -- it just doesn't work
4 that way from that perspective.

5 Q Let me -- so your testimony is it wasn't you, in
6 terms of the timing, right?

7 A Correct.

8 Q Okay. Are you -- other than Ted or Fred, were
9 there -- were there other drivers you -- you think were
10 within Kik on that timing decision?

11 A For all of the things that we're talking about
12 here, the utility, the discussion of securities law and
13 everything else, these were board discussions informed by
14 counsel. So they were a set of interactions that I don't
15 think I can talk about without violating the privilege.

16 Q We don't want you to violate privilege.

17 I think my question is a little different. My
18 question is -- we're trying to understand who
19 institutionally was -- was really leading the decision-
20 making on the Kin offering.

21 A That's speculation I can't comment on.

22 Q You didn't know?

23 A It's just speculation I can't comment on from that
24 perspective. I can't talk to you about how this process
25 went without going into the board and counsel discussions.

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1 Q Did you have an impression in 2017 that crypto was
2 a hot market?

3 A Yes, I did.

4 Q Okay. That was -- even in the mainstream press,
5 there was reporting on it, correct?

6 A Correct.

7 Q Did that sense that crypto was a hot market, from
8 where you were sitting on the Kik board, inform timing
9 decisions about when to introduce the Kin product?

10 A I can't answer that because I was not the person
11 that knew the most about these markets. So I sat and
12 listened in these sessions and was not the person saying we
13 should do this or that because I just knew less than the
14 other people did.

15 BY MR. SCHLEGELMILCH:

16 Q Who -- who was that person?

17 A It's not a person per se. The two people that
18 knew the most about the marketplace were Ted, our CEO, and
19 Fred Wilson, who had already been involved in other ICOs.

20 MR. SCHLEGELMILCH: Thank you. I apologize.

21 MR. LEASURE: That's great.

22 BY MR. LEASURE:

23 Q So based on your knowledge of sort of how Kik was
24 working as an institution in 2017, would the drivers of a
25 decision on timing, when we should introduce this product

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1 BY MR. MITCHELL:

2 Q I'm sorry. Sitting here today, do you know the
3 answer to the question who was the person who did this, who
4 was the person who had that role?

5 A I don't recall a person having the role you're
6 describing. So I don't know how to answer the question.

7 Q Okay. We were -- you were looking at some
8 documents from a meeting in early May. What -- what
9 happened -- do you remember -- I mean, at that meeting, do
10 you remember, there was a decision? Were there -- was
11 anything -- any -- was there final decisions made at that
12 meeting?

13 A I -- I don't recall the final decisions without
14 having to look through the document, so --

15 Q So --

16 A I just don't recall the -- the what was the result
17 of that particular meeting.

18 Q Okay. Do you remember what happened after that
19 meeting?

20 A I don't recall specifically what happened after
21 that particular board meeting.

22 Q Were you involved in the drafting of the white
23 paper?

24 A I was not.

25 Q Did you see the white paper --

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1 A That I know of, I was not. I mean, I don't -- I
2 don't recall seeing the white paper or reading the white
3 paper.
4 Q Do you recall seeing it before it was published?
5 A I don't recall seeing it before it was published.
6 Q Did you -- I know the answer to this question but
7 I'm going to ask it anyway. Did you approve it before it
8 was published?
9 A I don't recall approving the white paper per se.
10 I was not the person that knew more about this, so I was not
11 that involved.
12 Q Did the board approve the white paper?
13 A I don't recall. I'd have to go back and look at
14 the board minutes and see.
15 Q The -- the -- there was -- I mean, I'm going to --
16 there was another meeting a little before -- before the
17 public announcement of the Kin project.
18 A Mm-hmm.
19 Q Do you remember that meeting?
20 A I don't recall the specific meeting. I'd -- I'd
21 literally have to look at the board minutes to --
22 Q That's fine. And I'm going -- that's why I'm
23 going to give you -- I'm going to give you Exhibit 18B,
24 which is a document with Bates Nos.
25 KIN_FOUNDATION_CAP_006014 through 6045.

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1 Flip through it again. First question is going to
2 be, do you recognize this document?
3 A I recognize it as a Kik board deck.
4 Q That was used for a meeting on May 23rd?
5 A That's -- I don't recall that. I'm reading it as
6 you are --
7 Q Okay.
8 A -- from this message.
9 Q But it looks like a board deck that you used?
10 A It looks like a board deck from May 23rd, 2017.
11 Q And is the first page an e-mail from Ted
12 Livingston to the board?
13 A Yes, it is.
14 Q Okay.
15 MR. SCHLEGELMILCH: Can I ask a quick question?
16 BY MR. SCHLEGELMILCH:
17 Q This looks like it was a telephone call. It says
18 "board call."
19 A I don't recall the specific dates that we did a
20 call versus a video call versus a meeting.
21 Q Okay. My question --
22 A So if it's saying for a board call tomorrow, then
23 it's likely a board call. I don't have any reason to
24 challenge that.
25 Q Okay. My question -- I thank you.

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1 My question is, do you normally, when you do a
2 call
3 for Kik or for another board that you sit on, do you
4 normally have the board book in front of you or on your
5 computer screen so you can sort of follow along, or -- or
6 what's your practice normally?
7 A As often as I can, I like to do that. But, to be
8 honest, sometimes I'm doing board calls on airplanes and in
9 cars and in Ubers, and it just depends on what's happening
10 at the time. Boards are complicated scheduling vehicles
11 because there are often seven or eight peoples' schedules.
12 And, quite frankly, mine was not the most important
13 schedule.
14 MR. SCHLEGELMILCH: Sorry, Brent.
15 BY MR. MITCHELL:
16 Q So I'm just going to talk to you some more about
17 the -- about this meeting -- sorry.
18 Does this -- I'm looking at what again we call
19 refreshing your recollection. Do you remember what people
20 talked about at this meeting?
21 A I don't remember what people talked about at this
22 meeting per se unless I look at the specific pages and we --
23 and we discuss those points.
24 Q Okay.
25 A I just don't recall. If you said to me do I

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1 recall the board call of 5-22-2017 -- and I just don't
2 recall that.
3 MR. FONDO: Yeah. Just answer his question.
4 BY MR. MITCHELL:
5 Q Sure. So let me take -- I'll take you to a couple
6 of places. Can you look at the page that's 6039.
7 A Yeah.
8 Q At the top, it says, "Sales Process." This is the
9 time period the end of May?
10 A 6039.
11 Q 6039.
12 A Yeah. Got it. Yeah.
13 Q Great. Can you just look at this?
14 A Yes.
15 Q This describes a total target raise of \$100
16 million.
17 A Yes.
18 Q At this time, sort of in this period right before
19 the sale was announced, was Kik's plan to sort of go forward
20 with a process that would raise \$100 million?
21 A I don't recall the specific target that we had at
22 that point in time other than to see it here, and I don't
23 have any reason to challenge what's here.
24 Q Thank you. Let me take the number out of it then.
25 At this point, was it -- was it Kik's plan to sort of have a

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1 process that would raise money over the next upcoming time
 2 period?
 3 A I don't -- when you say raise money over the
 4 upcoming time period, the process is what it states here.
 5 So I just don't --
 6 Q Okay. So --
 7 A I don't know how to comment on it other than
 8 what's written here.
 9 Q Great. So does this page 6039, does this
 10 accurately describe sort of what the conversation was at
 11 that time -- the plan was at that time?
 12 A I don't remember the conversation. I have no
 13 reason to doubt what's here or that this wasn't in fact a
 14 recollection of what was referred to us or what was
 15 communicated to us.
 16 I don't have any reason to doubt that that's what
 17 was communicated. I'm just simply telling you I don't
 18 recall the specifics on that.
 19 Q Sure. When -- when you were -- when this -- very
 20 specifically, when you were being communicated with at the
 21 end of May, was the -- was there a -- the plan in place was
 22 to have what's called a presale of a SAFT and then a token
 23 distribution event?
 24 A That was my general understanding.
 25 Q Okay. And it was -- it was a plan to have a

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1 Q I'm going to take you to the page that ends in
 2 Bates No. 6036. It says "Proposed product MVP."
 3 A Right.
 4 Q What's -- what was the proposed product MVP at
 5 this time?
 6 Sorry. What was -- what is a proposed product
 7 MVP? What was this -- I don't mean literally what the --
 8 I'll get to the --
 9 A Generically, a proposed product MVP is what are
 10 the features that are going to occur within the product in
 11 its essentially first release.
 12 Q So what was -- at this time, what was the proposed
 13 product MVP related to the Kin offering?
 14 A So that's -- that's a -- that's a very detailed
 15 answer that I don't recall the specific pieces of it. I can
 16 look here and read along with you in terms of what's in the
 17 document, but I don't recall the specific pieces in the MVP.
 18 Q Is what we're reading here, is that what the
 19 management proposed to the board that day?
 20 A I have no reason to doubt what you just said.
 21 Q And at the meeting, do you have any memory of
 22 people changing the proposed product MVP?
 23 A I don't recall whether they did or did not.
 24 Q But you don't have any memory of anybody changing
 25 it?

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1 process that had two parts?
 2 A That was my understanding.
 3 Q And if you flip to the next page, do you see
 4 there's a page that -- Bates No. 6040 that has "Token sale
 5 structure" at the top?
 6 A Yeah.
 7 Q Do you see that?
 8 A I do.
 9 Q Okay. And so under the -- it says -- so this is
 10 the description of -- sorry.
 11 Was there a plan to sell 10 -- or to offer 10
 12 percent of the float?
 13 A I don't recall the specifics of how the offering
 14 was going to work. I'm looking at the same piece of paper
 15 you're looking at here.
 16 Q Okay.
 17 A So I don't -- if you said to me without this piece
 18 of paper, I don't recall.
 19 Q What do you recall that sort of the plan -- the
 20 structure -- the discussion around how to structure it,
 21 anything -- sort of what to sell, when to sell it, to who --
 22 whom to sell it?
 23 A I don't recall the details around how to structure
 24 it. As I've said repeatedly, everything we encountered here
 25 I was seeing for the first time. So it was, you know.

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1 A I don't have any memory of anybody changing it or
 2 not changing it. I just don't -- I just don't recall.
 3 Q How did this proposed product MVP come about?
 4 A This is the management coming back to the board
 5 and saying this is what we propose will be in the MVP.
 6 Q Then why did they propose this?
 7 A Why did they propose the features in this versus
 8 other features?
 9 Q Yes.
 10 A I don't know.
 11 Q Did they -- did anybody on the board ask them
 12 that?
 13 A I don't recall.
 14 Q And do you remember -- okay. So staying sort of
 15 in the time here, do you remember at the meeting whether
 16 anybody explained why -- how -- what the reasoning behind
 17 this was?
 18 A I don't recall the specific reasoning behind it.
 19 I have no reason to believe -- or I have no reason to doubt
 20 that there would have been explanation on these points. I
 21 just don't recall them.
 22 BY MR. SCHLEGELMILCH:
 23 Q Do you recall -- I'm sorry. I interrupted. You.
 24 MR. MITCHELL: Go ahead.
 25 BY MR. SCHLEGELMILCH:

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1 Q Do you recall any discussion about the importance
2 of having an MVP prior to the ICO?
3 A I do -- I do not recall that.
4 Q Do you recall any discussions regarding whether or
5 not the existence of a MVP, a minimum viable product, was
6 important to the -- the ICO?
7 A I don't recall that specific discussion.
8 BY MR. LEASURE:
9 Q This write-up, again, on 6036, describes at a high
10 level both a wallet and sticker bags. Is that right?
11 A I'm reading the document. And if you're asking me
12 based on what I'm reading here, then that's what I'm
13 reading.
14 Q That's fine.
15 A I'm reading the same thing.
16 Q Okay.
17 A So I just don't recall the details of it from the
18 time.
19 Q Of course. Generally, not just about -- around
20 the time of this meeting -- but generally, as Kik was
21 looking at doing the Kin offering, was there discussion
22 about whether sticker packs would be sufficient or whether
23 there should be other products in the MVP?
24 A I don't recall whether that was a -- I don't
25 recall that discussion.

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1 Q What -- what can you tell me, if anything, about
2 discussions about what the MVP should ultimately be?
3 A I don't recall the specifics around the MVP
4 discussion. So I don't -- I don't have a list of features
5 that would be either in or out as a result of that.
6 Q Understood. And just because you said specifics,
7 can you give me anything generally that's in your head about
8 discussions about what should be in the MVP?
9 A So it would be generally things to be able to
10 support Kin and the efforts to create a community around
11 Kin. That was the general goal that I recall.
12 Q Okay. I'll represent to you that Kin was offered
13 to -- to the public in the fall of 2017.
14 A (Witness nods.)
15 Q What was, to your knowledge, the MVP that came out
16 with Kin at that time?
17 A I don't know what the MVP was that came out with
18 Kin at that time.
19 Q Sitting here today, you don't know?
20 A I do not know.
21 Q Do you know if there was a wallet?
22 A I don't know.
23 Q Okay. Let me ask you to interpret one thing.
24 It's under item A here, that says, "Create a wallet inside
25 Kik App."

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1 A Yes, I see that.
2 Q Yeah. I won't read the entire paragraph because
3 we can all read, but last sentence says, "Only by entering
4 the private key, a user will be shown the wallet (including:
5 Balance transaction history, send/receive functionality, Kin
6 status.)"
7 Pausing on that, I just want to draw on the term
8 "send/receive functionality." Do you know what that means?
9 A I know what send/receive functionality means in
10 general terms within a messaging app. I don't know how
11 they're referring to it here, if it happens to be any
12 different.
13 Q What would --
14 A It's no different than any other send/receive that
15 we would all know. That's my understanding of it, but --
16 Q Would you agree that in this context of talking
17 about Kin as a currency, send/receive functionality would
18 refer to the ability to send or receive Kin?
19 A I don't know the answer to that question. I'm not
20 trying to be evasive. I just simply don't know.
21 Q I don't think you're being evasive.
22 Is there anything other than sending or receiving
23 Kin that send/receive functionality could refer to that
24 you're aware of?
25 A I don't know. I just don't know. I'd have to

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1 speculate.
2 Q You're not aware of anything else, though?
3 A I'm not aware of anything else. I'm also not
4 aware that there wasn't some other thing that was around. I
5 just simply don't know.
6 Q Could you send or receive Kin in the Kik app when
7 Kin was offered to the public?
8 A I don't know.
9 Q So you don't -- like, you don't know if when I --
10 let's say when I bought Kin in the public offering, could I
11 transact with Kin in the Kik app?
12 A I don't know.
13 Q Do you remember discussion about building that
14 feature?
15 A I don't remember the specific discussion of that
16 feature. I remember discussing supporting the Kin
17 Ecosystem, but I don't remember that particular feature.
18 BY MR. MITCHELL:
19 Q I'm going to give you what we've already marked as
20 Exhibit 27. It's the board minutes for the May 23rd
21 meeting. It has the Bates No. KIK00078788-789.
22 A Mm-hmm. Yes.
23 Q So I'm just going to -- there's a -- there's a
24 section about a Kin Ecosystem. Can you see that?
25 A Yes.

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1 Q So at this point, had Kik decided -- had Kik at
2 least proposed -- Kik management proposed to the board that
3 they would sell 10 percent of the available Kin in this
4 presale and public sale of Kin?
5 A I don't recall the specifics around this. I'm
6 reading from the same place that you are where it says 10
7 percent sold in the presale and public sale of Kin. So I'm
8 reading that in the minutes and I don't have any reason to
9 doubt that that's accurate.
10 Q Okay. And then there's another part that says,
11 "Further, he described the proposed minimum viable project
12 which will be achieved before the public token sale will
13 occur." Do you see that?
14 A I do.
15 Q And do you have any memory of a discussion of
16 whether -- what -- that a minimum viable product would be
17 achieved before the token sale?
18 A I don't recall a discussion around that.
19 MR. MITCHELL: Jeff?
20 BY MR. LEASURE:
21 Q Would you agree that, just based on these minutes,
22 it appears that there was some discussion?
23 A I would literally read the same thing that you
24 have here where it says there was a discussion around it.
25 And I have no reason to believe that there was not a

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1 discussion. I just don't recall it.
2 Q Had -- if I remember right, in February, I think
3 the term was you dissented from the board vote to start
4 going forward with Kin; is that right?
5 A I dissented from the board vote broadly on the
6 strategy choice of either cutting the company back or going
7 forward on what I have referred to as the ICO.
8 Q Understood. At this point in May, were you --
9 were you dissenting from the plan to move forward with the
10 Kin offering?
11 A The convention around a board is that, you know,
12 you make your point, and, if the rest of the board wants to
13 go forward and get something done, you can either dissent
14 every single time and ultimately leave, or you can just
15 simply say if this is the will of the board and this is the
16 recommendation from management, then that's what you go
17 forward and do.
18 Q And that's -- that -- just to finish that loop,
19 that's -- that's what you were thinking at this time?
20 A What I was thinking at this time is that I voted
21 against the ICO because I thought that was the riskier path,
22 meaning whether it was going to be successful or not. And
23 by this time, the company and the consultant had come back
24 and -- and given indications that they thought they could be
25 successful. And so I voted with the board because I thought

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1 that that was the most prudent thing for the company to do.
2 Q So from that, it sounds like the board's report,
3 the consultant's report -- that you were persuaded that it
4 was actually a good idea at this point in May of 2017 to
5 proceed?
6 A So I wouldn't use the term good idea because good
7 idea would give me more credit than I'm due from that
8 perspective and knowledge in terms of this.
9 Q Okay.
10 A What I was making a judgment at this point was at
11 the time that this had been explained to me before, I just
12 couldn't make a judgment about whether or not they could be
13 successful in -- in executing on the ICO. By this time,
14 they had come back to the board with a number of reports,
15 and the indications were they thought they could be
16 successful.
17 BY MR. MURTHA:
18 Q I apologize if you -- you answered this question
19 previously. But who received the proceeds of the Kin sale?
20 A The -- I don't -- so I don't know specifically.
21 Like, I wasn't there for the wire transfer to kind of see
22 how that happened.
23 Q Understood.
24 A But my understanding is that it was being held in
25 the treasury at Kik.

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1 Q And how did you gain that understanding?
2 A Just simply because it had to be somewhere, and so
3 that would be my understanding.
4 Q Did you oversee the management of the development
5 and execution of the policy relating to the Kin proceeds
6 received?
7 A I did not oversee the management of that.
8 Q Okay. Can I point your attention to the opposite
9 side of Exhibit 27 and specifically "Resolved" --
10 BY MR. MITCHELL:
11 Q Sorry. Mr. Holland, you have -- you have a
12 single-sided copy. Everyone else has a double-sided copy.
13 A Second page.
14 MR. MURTHA: I apologize.
15 BY MR. MITCHELL:
16 Q He wants you -- he wants you to look at the page
17 that ends with 78789.
18 A Right. Yeah.
19 BY MR. MURTHA:
20 Q And I'm reading from the document. It says,
21 "Resolved that the board hereby designates Messrs. Holland
22 and Wilson as the finance committee of the board to assist
23 and oversee management in the development and execution of a
24 policy relating to crypto currency proceeds received from
25 the sale of Kin."

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1 Are you saying that you did not actually oversee
2 such a policy?

3 A No. I'm actually saying that, in this case, there
4 were two investors on the board, and it was Fred Wilson and
5 Paul Holland. So the two investors were given sort of the
6 finance job as it were, which was to provide commentary on,
7 as proceeds came in, you know, what to do. And the primary
8 commentary was around what to keep in caveat and what to
9 keep in ether.

10 BY MR. MITCHELL:

11 Q Caveat is dollar?

12 A Yes.

13 BY MR. LEASURE:

14 Q And you did that in the future?

15 A I was -- yes. We were asked as a subcommittee
16 what should we do from that perspective once the proceeds
17 started coming in. And we gave our opinion, which was
18 essentially that as time went by, that it was converted to
19 caveat.

20 Q Why? Why did you want ether to be converted into
21 dollars?

22 A Because the company -- in order to go and execute
23 on what it needed to do in terms of getting the process
24 started -- I -- I personally wasn't aware of a marketplace
25 for ether where you could go and, say, put ether in

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1 somebody's paycheck. So we actually had to pay people. And
2 we needed to have an acceptable, non-digital currency to pay
3 people.

4 Q Right. You're running an operating business. You
5 want dollars?

6 A That's correct.

7 BY MR. MITCHELL:

8 Q Can I just point you up to the top of that page
9 again. There's a -- second paragraph says, "Resolved that
10 the board hereby" -- well, it says -- top page -- top of the
11 page says, "Whereas the board has reviewed the timeline,
12 proposed road map, Kin allocation, and white paper."

13 A Right.

14 Q And then, "Resolved that the board hereby approves
15 the timeline, proposed road map, Kin allocation, and white
16 paper."

17 I just was hoping that might, again, refresh your
18 recollection. Do you remember reading the white paper
19 before it was published?

20 A I don't remember reading the white paper before it
21 was published.

22 Q Okay.

23 Okay, so then there was the public announcement
24 happened. Were you there? Were you at the announcement?

25 A No. I don't -- I don't know where there is.

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1 Q That sounds good. Sorry.

2 A Was I in the ecosystem? Was I in the world? I
3 was in the world. But I was not -- I was not in the place
4 --

5 Q I think --

6 A -- that these things were announced.

7 Q I think Mr. Livingston sort of gave a speech --

8 A Okay. I see.

9 Q -- or was part of a chat.

10 A Okay.

11 Q Were you -- were you at that chat?

12 A I -- I don't -- where was the chat, and when was
13 it? I don't recall that, but --

14 Q I think it was the Token Summit, probably in New
15 York City.

16 A I did not attend --

17 MR. MURTHA: End of May --

18 THE WITNESS: I did not attend the Token Summit.

19 THE REPORTER: I just have to remind you guys, one
20 at a time. I am taking this all down, so --

21 MR. MITCHELL: Good.

22 THE WITNESS: Thanks.

23 I was not at the Token Summit.

24 BY MR. MITCHELL:

25 Q Did you ever see the video of Mr. Livingston

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1 making the announcement?

2 A I believe I did see a snippet of the video of him
3 making the announcement.

4 Q I'm sorry. What do you mean by snippet?

5 A I mean I don't -- I seldom watch the entire video
6 that somebody sends me of a -- whatever it happens to be.
7 So I -- I seem to remember that there was a video of him
8 making an announcement. And I seem to recall that I may
9 have seen a snippet of that.

10 Q And then -- so then after the -- after that --
11 after the announcement was made, what -- what happened in
12 terms of your -- you know, in terms of the board and your
13 role -- your knowledge or your involvement with the Kin
14 token offering?

15 A I -- I don't know what you're -- I don't know what
16 you mean. Like, what was the role of the board, what --

17 Q Let me just -- what happened next in terms of the
18 Kin token offering? Did you have another board meeting?
19 Did you --

20 A I don't recall a specific kind of next step in
21 terms of the offering accept that we just continued to have
22 board meetings and discussions.

23 MR. MITCHELL: Okay. We're going to go off the
24 record.

25 THE VIDEOGRAPHER: Going off the record. The time

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1 on the monitor is 2:38 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: This begins disc No. 3. We are

4 back on the record. The video monitor shows 2:48 p.m.

5 THE WITNESS: Sorry.

6 BY MR. MITCHELL:

7 Q Are you okay?

8 A I got a new message, but that's okay. That's all

9 right. No worries.

10 Q Okay. So after the announcement -- after the

11 announcement, we were discussing sort of what happened. What

12 -- so I'm just trying to understand this sort of in this

13 late May, early June time period, were you having

14 conversations with people about the Kin offering outside of

15 the board meetings?

16 A I -- I don't recall per se. We were definitely

17 having them inside the board meetings.

18 Q Okay. There was a June -- let's see -- June --

19 there's a meeting on or about -- in or about June 12th. I'm

20 going to hand you the number -- sorry.

21 Do you remember missing a board meeting because

22 you

23 were on a flight in early June?

24 A I know there was some period in here where I

25 missed a board meeting. I don't know if that's the one.

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1 But I -- I recall that I did miss a board meeting so --

2 (SEC Exhibit No. 47 was marked for

3 identification.)

4 BY MR. MITCHELL:

5 Q I'm going to hand you what has been marked as

6 Exhibit 47, again, to refresh your recollection. This is a

7 two-page document that has Bates No. KIK_00001838 to 1839.

8 Like always, my first question is going to be, do

9 you recognize the document?

10 A I recognize the document being a communication to

11 the Kik board. I don't remember the specifics of this

12 document.

13 Q Okay. At the top, is this an e-mail from you to

14 the -- to Michelle Dent and the Kik board?

15 A Yes. Saying that I was going to be unavailable

16 due to a flight.

17 Q Okay. And, below that, is that an e-mail that

18 Michelle Dent sent to the Kik board including you?

19 A Yes, I believe so.

20 Q So did you receive a Kin legal risk assessment

21 memo that Cooley had provided for your review? Sorry. I'm

22 reading -- I'm just reading something down there. It's No.

23 1.

24 A No, no. I understand. Yeah.

25 I don't recall receiving that specific document.

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1 But if it says that I got it as part of the board, I don't

2 have any reason to doubt it.

3 Q Okay. So this meeting happened.

4 A Mm-hmm.

5 Q You weren't at the meeting. You -- but it appears

6 from the document at least you weren't on the call itself.

7 Do you remember what -- did -- afterwards, did you talk to

8 people about what happened?

9 A I don't remember the follow-up to this particular

10 meeting.

11 Q Do you remember around this time Mr. Wilson

12 raising, you know, concerns about how the offering was being

13 planned or what Kik was going to do?

14 A I don't recall the specific concerns. I recall

15 Fred raising concerns about the state of the offering

16 marketplace.

17 Q What kind of concerns?

18 A Just that the market appeared to be, you know,

19 sort of overheating or getting into more of a frenzied mode

20 in terms of the ICO markets itself. And so he wanted to

21 make sure that we were being as diligent as we could be.

22 Q Why -- okay. And what did you think? Did -- what

23 was your reaction to that?

24 A Well, it's -- I mean, I would refer to that as

25 sort of a motherhood statement. It's like, well, who would

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1 not want to be as diligent as they could be? So I would be

2 in agreement to try to be as diligent as we could be.

3 I didn't know what that means because I didn't

4 have the expertise that he does in that -- in that world.

5 Q Did Mr. Wilson propose that Kik not sell Kin

6 tokens until Kin could be -- could -- sort of was

7 implemented inside the Kik app?

8 A I don't recall his specific recommendation.

9 Q Do you remember generally him having a concern or

10 a concern about when Kik planned to sell the Kin tokens?

11 A I don't remember the concern around the timing.

12 Q After that meeting, did you have conversations

13 with people about the offering and the plan?

14 A I -- I don't recall having a separate conversation

15 after that meeting. It may have occurred. I just don't

16 recall.

17 Q Do you remember board resolutions about the timing

18 of the -- of the Kin offering?

19 A I don't remember specific board resolutions around

20 the timing.

21 Q I'm going to give you what's marked as Exhibit 48,

22 which is a document that's KIK_00103324 to 27.

23 (SEC Exhibit No. 48 was marked for

24 identification.)

25 BY MR. MITCHELL:

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1 Q Take a chance to look at it. And then, when
2 you're ready, tell me.

3 A (Witness complies.)

4 I don't remember the document
5 specifically,
6 but reading this refreshes my memory that the document
7 occurred. So --

8 Q Okay. What did -- sorry. What is Exhibit 48?

9 A What is Exhibit 48? It is a DocuSign of a board
10 resolution.

11 Q Okay. So the first two pages are an e-mail. But
12 it's not actually an e-mail to you; is that right?

13 A Correct. It's not an e-mail to --

14 Q Do you have any reason -- so -- but then the last
15 two pages are the resolution of a board -- by the board?

16 A That's correct.

17 Q And that's a resolution that the board executed?

18 A Yes, it is.

19 Q Okay. So I'm going to take you through a little
20 bit of it. From the first page of the resolution, it says,
21 "Whereas the corporation" -- well, the third line. "Whereas
22 the corporation requires additional funds to finance the
23 development of the Kin Ecosystem and the network application
24 before such rollout of the Kin Ecosystem and development of
25 the network application."

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1 What are they -- what is this a description
2 of? What is -- it says the corporation requires additional
3 funds for something. At this time, what did you understand
4 that the company needed funds for?

5 A I -- I wasn't following that at that level of
6 specificity, so I couldn't comment on what it needed the
7 funds for this case.

8 Q Okay. The paragraph above it says, "Whereas the
9 corporation proposes to offer for sale to the public an app
10 coin called Kin at such time as the Kin Ecosystem is
11 functional."

12 What -- what did that mean?

13 A That was the Kin public coin that would support
14 the Kin Ecosystem, what I referred to earlier.

15 Q And what -- so what was the -- such time as the
16 Kin Ecosystem is functional?

17 A I don't know what they mean specifically in that
18 regard as to how it relates to the product.

19 Q Was there any conversation about what that meant?

20 A I don't -- I don't recall.

21 Q You don't remember any conversation about that?

22 A I don't recall a conversation about what it would
23 take to make the Kin Ecosystem functional as it relates to
24 this resolution.

25 Q Okay. So what was the board approving then?

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1 A The board was approving the recommendation of
2 management that we go forward with the steps that were here.

3 Q And one of those steps is that the company should
4 offer for sale to the public an app coin called Kin at such
5 time as the Kin Ecosystem is functional?

6 A That's -- I can -- I'm reading the same thing you
7 are. I just don't recall the discussion.

8 Q But that's what the board approved?

9 A That's what the board approved.

10 Q So what -- what happened after this -- after this
11 -- what happened after this -- well, so do I understand
12 correct that the -- that this document says that that
13 company should enter into agreements to sell SAFTs and then
14 later it would raise an additional \$50 million once the Kin
15 Ecosystem is built out?

16 A I don't know the sequence from that perspective
17 because I just wasn't an expert in this arena. So I can
18 only read along with what you're reading along with here.

19 Q Okay. So reading along, did I just describe what
20 the board approved?

21 A I can read the statement itself. I don't know
22 that that's going to be helpful. But I just don't know if
23 the way you just interpreted that is exactly the way the
24 board meant it, so --

25 Q Sure, sure. As a board member, what did the board

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1 approve with this resolution?

2 A I literally would -- would read it. I just don't
3 -- I don't want to offer an interpretation of it. I would
4 just read it.

5 Q Okay. But it was correct? This -- this
6 resolution, this is what the board approved?

7 A This is the -- this is the board resolution that
8 was approved.

9 Q Okay.

10 MR. FONDO: Do you have a specific recollection of
11 that, or are you just reading this document?

12 THE WITNESS: I'm reading this document. I don't
13 have any reason to doubt the document, but I'm reading the
14 document. I don't -- yeah.

15 MR. FONDO: Just -- so when you -- just be clear
16 --

17 THE WITNESS: Yeah.

18 MR. FONDO: -- when you're answering his questions
19 so he's --

20 THE WITNESS: Okay. Yeah. So I don't recall the
21 -- I mean, I tried to answer that. I don't recall the
22 specifics of the pieces of the resolution here. But I
23 don't have any reason to believe this isn't a
24 resolution.

25 BY MR. SCHLEGELMILCH:

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1 Q Can I ask -- but you -- you DocuSigned this board
2 resolution?
3 A That's right. Mm-hmm. Yeah.
4 Q Okay. Did you do that yourself, or did you have
5 an assistant or somebody that does this?
6 A It depends. Sometimes, if I'm on a mobile device
7 and it's easy, I can -- and if I can, you know, be able to
8 kind of absorb what it is I'm -- I'm signing, I can do it.
9 If it's not, I have to -- I send it to the assistant and --
10 and -- and ask her to say, Look, this is an agreement that
11 the board has done. You have my permission to assign -- to
12 sign.
13 Q Okay. But, given that this was a board
14 resolution, one of those two things would've happened,
15 right? You either would have DocuSigned it yourself --
16 A That's right.
17 Q -- or you would have directed your --
18 A An assistant to DocuSign. That's correct.
19 BY MR. MITCHELL:
20 Q Did you have -- did you have any conversation with
21 the board about, like, why this was the right timing, why
22 the timing was to raise up to an additional \$50 million in a
23 public token distribution event once the Kin Ecosystem is
24 built out?
25 A I don't recall the specifics around the discussion

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1 around the timing.
2 Q Do you remember anything about the discussion
3 around the timing?
4 A I don't recall the specifics around the discussion
5 around the timing. I just don't recall.
6 Q I'm asking if you remember anything about the
7 discussion around the timing.
8 A Not particularly. No. I just -- it's just not --
9 I mean, there are lots of details here. I just don't
10 remember the specifics on the details.
11 Q Okay. But I'm asking generally. Did you talk to
12 Fred Wilson about, Boy, when should -- about -- what's the
13 -- when should we -- when should Kik raise up to an
14 additional \$50 million in a public token distribution event?
15 A I don't recall a specific conversation with Fred
16 Wilson. These were items that were discussed with board and
17 with counsel as it related to the entire process.
18 Q Okay. So tell me about that. What were the
19 discussions?
20 MR. FONDO: Not the discussions with counsel. But
21 if you had discussions that were --
22 THE WITNESS: These are -- these are all
23 discussions with counsel. So this is -- this is --
24 these are the board -- these are board meetings where
25 we discussed which steps you had to take.

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1 BY MR. MITCHELL:
2 Q Okay. So the board meeting --
3 A But I don't have a specific reference to this
4 because I don't -- I mean, I can't tell you where I was when
5 I read it. I don't --
6 Q Sure.
7 A I just don't remember.
8 Q Outside a board meeting, though, did you ever --
9 MR. FONDO: Well, I don't think -- were you at
10 this board meeting either?
11 THE WITNESS: Is this the one that I was on the
12 airplane? I don't -- I just don't know.
13 BY MR. MITCHELL:
14 Q No. That was the 13th. This is the 26th. So
15 there's -- there was a board meeting on the 13th that you
16 appear to have been on an airplane. I'm just asking, like,
17 did you have any conversations about --
18 MR. FONDO: Just -- just to correct the record --
19 so are you sure that there was two board meetings in
20 the two weeks at that time?
21 MR. MITCHELL: I don't -- I don't think there's a
22 board meeting on the 26th. I just have this.
23 MR. FONDO: Okay. So that's -- okay. I'm sorry.
24 THE WITNESS: So is this -- is this reflecting on
25 the board meeting from the 12th? Is that your

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1 understanding?
2 BY MR. MITCHELL:
3 Q I don't -- I'm -- all joking aside, we made you
4 fly across the country because this is how we learn. Like,
5 I don't -- this is why I'm asking it.
6 MR. FONDO: Oh, no, no. I -- because I -- it
7 implies -- so what you were implying -- that's the reason I
8 asked the question. I just wasn't clear. I thought you
9 were implying that there was a second board meeting, like
10 this -- this was the --
11 MR. MITCHELL: No.
12 MR. FONDO: So I misunderstood what you were
13 saying.
14 MR. MITCHELL: So Mr. Holland just said that all
15 the conversations he had about this were with counsel
16 at board meetings. I don't think he went to a board
17 meeting after May 23rd. So I think that there's
18 conversations in June that he had with other people
19 that didn't involve lawyers. That's why I'm asking to
20 figure out if that happened.
21 THE WITNESS: And I can't recall. I mean, I just
22 -- if I could, I would tell you. I just can't recall.
23 BY MR. MITCHELL:
24 Q You -- so, again, I'm interested in the
25 conversations you had about, Boy, when should we sell an

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1 additional 50 million in a public token distribution event.
2 The board here decides you should do that once the Kin
3 Ecosystem is built out. And I'm trying to understand, do
4 you remember any discussions about, Boy, when should we do
5 that?
6 A I don't recall.
7 Q Any discussions about why we should do it once the
8 Kin Ecosystem is built out?
9 A No, I don't. I don't recall.
10 Q Okay.
11 BY MR. LEASURE:
12 Q This document -- would you agree that this -- this
13 document, again, just reading it says that the sale to the
14 public will take place when the Kin Ecosystem is functional?
15 A I'm reading the same thing you are. I'm not --
16 I'm not debating it so --
17 Q That's fine. It says what it says.
18 A Yeah.
19 Q Aside from this document, now moving into the
20 world, is the Kin Ecosystem functional?
21 A I don't know.
22 Q Was it functional at the time of the public sale?
23 A I don't know.
24 Q So who would know?
25 A The Kik management.

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1 BY MR. SCHLEGELMILCH:
2 Q Was any portion of the Kin Ecosystem functional in
3 June 2017?
4 A I don't know.
5 Q This -- just for the record --
6 A This was a product development effort. I don't --
7 I don't know the status of what it was at that point in
8 time.
9 Q Okay. And I'm going to ask the questions even
10 though I'm going to -- I think I know the answer.
11 Was any portion of the Kin Ecosystem functional
12 when
13 the ICO was -- when the public sale was done?
14 A I don't know.
15 Q What about today? Is any portion of the Kin
16 Ecosystem functional today?
17 A I don't know the status of the Kin Ecosystem.
18 Q Thank you.
19 BY MR. LEASURE:
20 Q To the extent then -- if the Kin Ecosystem was not
21 functional or was not built out at the time of the public
22 offering, would that contradict this board resolution?
23 A I -- I don't know. I mean, I can read the same
24 thing that you can read from here. But I don't -- I don't
25 know.

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1 Q Okay.
2 A Yeah.
3 Q Around this time, June 2017, did you have any
4 concern that Foundation Capital had any legal exposure
5 itself in connection with the Kik offering?
6 MR. FONDO: And this would be outside of any
7 discussions with counsel.
8 THE WITNESS: These would've been discussions with
9 counsel, anything -- I mean, the minute you mentioned legal,
10 I would've consulted counsel.
11 BY MR. LEASURE:
12 Q Yeah. But let me ask it again. And if the answer
13 is yes, no, or counsel, that's fine.
14 Did you have concerns about Foundation Capital's
15 legal exposure in connection with the Kin offering in June
16 of 2017?
17 A That's counsel.
18 Q Which counsel?
19 A Well, I have inhouse counsel with Dave, and then
20 we have Cooley as a board counsel.
21 Q Okay. And so do you recall --
22 BY MR. MITCHELL:
23 Q Sorry. One second.
24 Did Cooley represent Foundation Capital?
25 A No. It represented the board. It represented the

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1 -- the board of Kik.
2 Q Did Cooley give you advice about whether
3 Foundation Capital had exposure?
4 MR. FONDO: So I would --
5 THE WITNESS: That completely would be a
6 discussion with counsel. So I don't -- there's no way
7 for me to comment on that without violating a
8 privilege. I think it's a 0 percent chance.
9 MR. FONDO: I'm in agreement.
10 BY MR. MURTHA:
11 Q If you didn't have concerns, your own, then why
12 would you have gone to counsel to begin with?
13 MR. FONDO: So I --
14 THE WITNESS: Again, I don't --
15 MR. FONDO: You guys are trying to, like, weasel
16 in on the privilege here, so --
17 MR. MURTHA: I'm not trying to weasel in on
18 anything.
19 MR. FONDO: I apologize. That was -- that was a
20 wrong term.
21 MR. MURTHA: That was.
22 MR. FONDO: That was. Yeah. I apologize. I
23 don't mean anything by it.
24 So -- but you started -- you're trying to -- to
25 get into potentially privileged areas. And so why

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1 don't you re-ask the question -- I apologize. Why
2 don't you ask the question again, and I'll --
3 MR. MITCHELL: I'll be honest. I may be the only
4 one, but I don't see how whether he had a concern if
5 Foundation had exposure -- I don't see how that --
6 MR. FONDO: So I would agree --
7 MR. MITCHELL: That's a yes or no.
8 MR. FONDO: So I -- well, I -- if the concern was
9 raised by counsel, and then he developed a concern, I would
10 say that's a privileged communication. If he had his own
11 independent -- did you ever have a concern, then I --
12 without having a conversation with counsel, then I would say
13 yes, he can answer that question.
14 MR. MITCHELL: Okay. I -- I hear you on that, and
15 we're just going to let you make it, and we'll move on. But
16 I don't -- I don't necessarily think that -- like, we're
17 just asking did he have -- did he have a concern that
18 Foundation could have exposure.
19 MR. FONDO: And if he developed that concern
20 through counsel --
21 MR. MITCHELL: But I don't see how saying yes or
22 no discloses anything about whether he had a
23 conversation with counsel. I agree with you that if we
24 ask the basis of it and that turns out to be that he's
25 talked to a lawyer, then he doesn't answer that

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1 question.
2 It's the first question that's both -- I don't see
3 how it's privileged, and it's relevant to sort of the
4 issues
5 we have with some of the documents with -- with Cooley, not
6 with you. But we have -- we -- but --
7 MS. CHESARI: But if the answer is yes, and then
8 the next question is, Is that based on discussions with
9 counsel --
10 MR. MITCHELL: And then you don't answer the
11 second question.
12 MS. CHESARI: -- then that does convey privileged
13 communications because that tells you he formed his concerns
14 based on a communication with counsel.
15 MR. MITCHELL: That's great. Cooley has taken a
16 position on this question, whether or not he had concerns.
17 And so that's what we're trying to understand, so --
18 MR. FONDO: Yeah. And I -- and so -- but I think
19 our position stays on that. And I think --
20 MR. MITCHELL: Sounds fine. We'll move right now.
21 MR. FONDO: And, also, not -- we're not trying to
22 break -- so listen. The issues that you -- I know there's a
23 lot of issues with Cooley and the privilege. We're not --
24 that's, to some extent, your fight with Cooley and however
25 you guys break that down. We're not -- we don't want to be

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1 in the position of breaking someone else's privilege in any
2 way.
3 MR. SCHLEGELMILCH: That's fine. I think we just
4 want to know where the edges are on the -- on the record.
5 MR. FONDO: Yeah. No.
6 MR. SCHLEGELMILCH: It is what it is.
7 MR. MITCHELL: Actually, yeah. Wait. I think it
8 would be important, though.
9 Whose privilege are you asserting? His --
10 MR. FONDO: Well, so, I don't -- I don't know the
11 answer to the question. So what I'm saying is if -- if he
12 had -- if his -- if -- if he didn't have any concerns and he
13 didn't consult counsel, he can answer the question. If he
14 had concerns and it had nothing to do with counsel, he can
15 answer the question.
16 But if he had -- if any of those concerns were the
17 result of talking to counsel either as a board member
18 talking to the board's counsel or as -- talking to the
19 inhouse counsel, then I don't think he can answer the
20 question.
21 MR. MITCHELL: That sounds great.
22 BY MR. MITCHELL:
23 Q And so you -- can you tell us, based on that, can
24 you answer the question?
25 A Counsel. I can't answer the question.

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1 Q All right. That's perfect. Move on.
2 So that resolution was there.
3 A Right.
4 Q What happened after that?
5 A I don't recall the next step. So I'd have to look
6 at the board decks, so --
7 Q Did -- were there discussions among the board --
8 among the board or anyone from Kik about changing that
9 resolution?
10 A I don't recall that.
11 Q You don't remember that happening?
12 A I don't.
13 Q Okay. I'm going to give you 49.
14 (SEC Exhibit No. 49 was marked for
15 identification.)
16 BY MR. MITCHELL:
17 Q 49 is three pages. It's a three-page document
18 Bates numbered KIK_00117728 to 30.
19 And I'm going to -- feel free to look at it. I'm
20 going to ask you if you recognize it. And then I'm going to
21 -- but I'll -- actually, I'll come back to the second.
22 Just for the record, it's a June 28th e-mail from
23 Peter Heinke to Michelle Dent with a subject line "Forward:
24 Signed Resolutions."
25 Mr. Holland --

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1 A Yes.

2 Q -- have you ever seen the first page before?

3 A I -- I don't recall the first page, the Peter

4 Heinke first page.

5 Q Yeah. Just for the record, your name isn't

6 anywhere on that page?

7 A Right.

8 Q But the second two pages are a board resolution.

9 Do you recognize that?

10 A Yes. It's a board resolution. And I don't recall

11 the specifics from the time, but I can see it here.

12 Q And so is this execute -- did this -- again,

13 similar to the question that Stephan asked earlier --

14 A This was executed with the DocuSign that I

15 would've approved.

16 Q Okay. I'm going to draw your attention now to the

17 second page, and feel free to compare it to the 47 and to 48

18 if you want. The second paragraph now says -- sorry. The

19 date on the bottom of this one is -- sorry, the date on the

20 e-mail is June 28th.

21 And this says -- now, the second paragraph on this

22 says, "Whereas the corporation proposes to offer for sale in

23 the public an app coin called Kin at such time as the

24 corporation can introduce the MVP defined below." Do you

25 see that?

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1 A Yes.

2 Q So did the board change the timing of the sale of

3 the coin?

4 A I don't recall.

5 Q How did -- why are there two board -- why are

6 there two different board resolutions?

7 A I don't recall why we had two different board

8 resolutions.

9 Q Do you remember discussing this with anybody?

10 A I don't remember a discussion around it. It

11 could've come as it related to a board meeting. But I just

12 don't recall.

13 Q Okay. At the bottom of the last page under the

14 signatures, there's some text in bold. It says --

15 A Yes. The term MVP?

16 Q So --

17 A Right.

18 Q -- it appears to be sort of a definition for this

19 document of the term MVP?

20 A Right.

21 Q Where did this come from?

22 A I don't know the answer to that specifically. I

23 don't know who wrote this -- these two paragraphs.

24 BY MR. SCHLEGELMILCH:

25 Q But it would've been your practice to have read

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1 this before you signed it or --

2 A Yes. And I'm -- I'm not trying to be clever. I

3 just -- my operating assumption would be that management had

4 written the MVP terms that are in here. I just don't know

5 exactly. So I'm just trying to be accurate in your

6 question. I don't know who wrote this actual piece.

7 BY MR. MITCHELL:

8 Q So this -- this issue of -- the first document

9 seems to suggest that the -- that the Kin tokens would be

10 sold when the Kik Ecosystem is functional. And the second

11 document says that the tokens will be sold at such time as

12 the corporation can introduce the MVP defined below. And I

13 guess I'm just trying to understand why -- was there some

14 change in the company's policy?

15 A I don't know.

16 Q Did you discuss this timing with anybody?

17 A I don't recall a discussion around the timing.

18 I'm not saying I did or didn't. I just don't recall.

19 BY MR. LEASURE:

20 Q Going to Exhibit 49 and the definition of MVP in

21 bold at the bottom, can I point you to that?

22 A Yeah. Mm-hmm.

23 Q This -- the third sentence says, "Only by entering

24 a private key, a Kik user will be able to see his or her

25 wallet including the Kik user's Kin balance, send/receive

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1 premium sticker functionality, and Kin status." Did you see

2 that?

3 A I do.

4 Q We talked earlier today about send/receive

5 functionality. Do you remember that discussion?

6 A Yes.

7 Q Would you agree that this language is now

8 different? This is talking about send/receive premium

9 stickers functionality?

10 A It's more specific.

11 Q Do you know how that came about?

12 A I don't know how that came about.

13 Q So, when we look at these two resolutions -- I

14 want to get your reaction and any recollection you have.

15 A Mm-hmm.

16 Q We look at these two resolutions two days apart

17 that seem to change, you know, sort of what needs to be in

18 place for the public sale to happen.

19 A Right.

20 Q Would you agree with that reading of these

21 documents?

22 A I can't answer that because that sounds to me like

23 it's a legal interpretation of what that would be. So I

24 don't -- I don't have a legal interpretation of it.

25 Q Believe me, I'm not asking for a legal

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1 interpretation of you.

2 I'm asking we -- would you agree that, from these
3 resolutions, there appears to have been some change in late
4 June regarding what needed to be in place or what Kik wanted
5 to have in place at the time of the public sale?

6 A It -- it appears from these documents that there's
7 an evolution of the MVP.

8 Q Great. And is there anything you can tell us
9 about the thinking or discussions around that evolution of
10 the MVP?

11 A I don't recall the specific discussions around the
12 evolution of the MVP.

13 Q I want to understand the board's role and your
14 role as a board member.

15 Do you think it is likely that even if you don't
16 remember the discussions, you and other board members were
17 involved at the time in discussions about the evolution of
18 the MVP?

19 A I would have to go back and look and see what the
20 content was of the board meetings at the time and what the
21 discussions were to be able to answer that. I can't answer
22 it today from memory because I just don't remember that.

23 Q I'm asking you to speculate. If they're changing
24 or evolving the definition of the MVP in late June, if
25 they're doing that, why are they going back to the board?

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1 public sale at the time that it could introduce the MVP

2 defined there?

3 A The plans that are laid out here in the board
4 document, I don't have any reason to debate the plans that
5 are around that. I just don't remember the sequence and
6 timing in the way you described it. I'm not debating it. I
7 just don't remember it that way.

8 Q Okay. Well, did -- did Kik's plan after -- sorry.
9 Strike that.

10 After June 28th or whenever this was
11 executed, did the company's plans change from what's laid
12 out in this resolution?

13 A I don't know.

14 Q Okay. So then in the interest of time, between
15 this period and the end of June and today -- or up -- we'll
16 say up until the actual sale happened, do you remember
17 talking to anyone about, hey, when are we going to do this
18 sale, when should we do this sale, what is the timing of the
19 sale?

20 A I don't recall specifically. It doesn't mean that
21 I -- that conversations didn't occur. I just don't recall
22 specifically and --

23 Q You don't --

24 A -- I'd have to go back and look to see when the
25 board meetings happened and the timing and the other stuff.

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1 Like, why would the board be involved in that?

2 A I'd have to speculate in terms of the answer
3 around that. So --

4 Q I'm asking you to.

5 A I think to keep the board informed.

6 Q Of the board members involved in thinking about
7 the MVP, is it most likely that Fred Wilson would be the
8 most involved board member?

9 A I don't want to comment for him. I think that's
10 something you should probably just ask him from that
11 perspective.

12 He knows more about ICOs than I do. That's --
13 that's a pretty definitive statement.

14 BY MR. MITCHELL:

15 Q Oh, I apologize. I was waiting for him to say
16 something. Okay.

17 A It was a good pregnant pause.

18 Q Sorry.

19 MR. LEASURE: Rich with meaning.

20 THE WITNESS: Yes.

21 BY MR. MITCHELL:

22 Q I mean, what about after this June 28th date --
23 sorry.

24 As of this June 28th date, did the -- did Kik plan
25 to raise \$50 million in the presales and then conduct the

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1 I just can't, like, out of my head say on June 13th,
2 something happened. I just don't recall.

3 Q No. I'm not asking you for the date.

4 I'm asking do you have any memories of times
5 between

6 June and the sale in September where you talked to people
7 about the timing for the sale, when we're going to do the
8 sale?

9 A I don't specifically recall that. It doesn't mean
10 it didn't happen. I just don't specifically recall.

11 Q Right. You don't remember them today? If those
12 conversations happened, you don't remember them today?

13 A Right.

14 Q Do you know what the Kin rewards engine is?

15 A I don't know specifically what it is. I mean, I
16 have a guess I could provide just based on how it works in
17 messaging type of thing. But I don't have a specific --
18 like, I couldn't give you the product spec.

19 Q Sure. Leaving aside the product spec, when -- did
20 you have any conversations with people about -- at Kik about
21 what the Kin rewards engine was and what -- what its
22 importance was?

23 A If the Kin rewards engine was presented and
24 discussed at a board meeting, then I'm sure I was in
25 discussions around that.

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1 Q But sitting here today, do you remember any
2 conversations about the Kin reward engine?
3 A I don't remember a specific conversation about the
4 Kin reward engine.
5 Q Do you -- at all? At all about the Kin reward
6 engine?
7 A Yeah. I just --
8 Q Okay.
9 BY MR. MURTHA:
10 Q What do you remember about the Kin offering?
11 A In what sense?
12 Q Just generally, what do you recall about the Kin
13 offering?
14 A The things that you've seen in here in the board
15 meeting and the interactions that are there, and the rest of
16 the interactions we had with board and counsel. That's --
17 that's the experience I had through that time period.
18 Q Do you have any specific recollections about any
19 events at all relating to the Kin offering?
20 A We've gone through a couple of dozen specific
21 events around that. And I've provided my commentary as best
22 I can.
23 BY MR. MITCHELL:
24 Q Do you remember Ted Livingston proposing that the
25 -- that the company pay a dividend using the proceeds from

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1 gone towards building the Kin Ecosystem?
2 A It's impossible for me to answer that.
3 Q Just ballpark?
4 A I don't know. I don't -- I don't have a ballpark
5 number of it because I'm not looking at the treasury every
6 day and as you know, I'm not on the board anymore. So --
7 BY MR. MITCHELL:
8 Q Let me just ask that. When did you leave the
9 board?
10 A About six to eight weeks ago. I'm trying to
11 remember the timing, but yeah --
12 Q Why? Oh. Why?
13 A Sorry. Go ahead.
14 Q Why?
15 A Several reasons. So, first, Kik is in an older
16 fund. So can I just give you some detail? Because that's
17 where maybe it'll help provide the color.
18 So Kik is in Foundation Capital VI, which is a
19 2008
20 vintage fund. So it's -- it's anywhere between three and
21 four funds ago, depending on how you want to think about it.
22 We have since done Foundation Capital VII. We're in
23 Foundation Capital VIII. We're raising Foundation Capital
24 IX. As an investor, I have to make a balance between having
25 time available for new investments and time available to

Page 211

1 the -- from this offering?
2 A There was a board discussion at some point about
3 what to do about the proceeds of the offering compared to
4 what some other people had done with their ICOs.
5 Q Okay.
6 A And one of the conversations was does it make
7 sense to pay a dividend.
8 Q Who said that?
9 A Ted.
10 Q Ted did. Was Ted asking, Hey, should we do this,
11 or was Ted proposing, Hey, we should do it?
12 A I don't recall. It was a discussion that Ted had
13 with the board. I don't recall whether it was a proposal or
14 just a question.
15 Q And what was your reaction?
16 A No.
17 Q Why?
18 A I didn't feel that that felt prudent compared to
19 what we'd seen out in the marketplace.
20 Q Why not?
21 A Because the notion behind doing the ICO was to
22 help to build the Kin Ecosystem and that was not consistent
23 in my mind with paying a dividend.
24 BY MR. SCHLEGELMILCH:
25 Q As of today, how much of the offering proceeds has

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1 deal with old investments. So sort of first part is that.
2 Second part, we only own 2 percent of the
3 company. It's in a \$750 million fund. So it's very
4 unlikely that any of the outcomes that are -- that could
5 happen with the company are going to materially impact the
6 fund. So that's the second point.
7 Third is that the company has pivoted into
8 an area that I don't know. So I don't feel like I can add
9 as much value as a board member.
10 And then, finally, this process has taken
11 up
12 an enormous amount of time, and so it's made it to where
13 it's basically financially prohibitive for my firm to keep
14 staying on.
15 BY MR. MITCHELL:
16 Q Then that's -- and "this process" is us, you mean?
17 A The SEC. Yeah.
18 Q Right. Good. We understand.
19 BY MR. SCHLEGELMILCH:
20 Q As of the time you left the -- just to close the
21 loop, as of the time you left the board, do you have a sense
22 for -- even a ballpark figure of how much raised in the
23 offering -- how much of those proceeds were put towards
24 building out the ecosystem as of the time you left the
25 board?

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1 A I do not.

2 Q Okay.

3 BY MR. MITCHELL:

4 Q Okay. I'm going to give you what has already been

5 marked as Exhibit 19B sort of as a precursor to asking you

6 -- do you -- there was a -- taking you from June into sort

7 of August, this is a document -- 19B is

8 KIK_FOUNDATION_CAP_006113 to 6138. And it is, on its face,

9 an e-mail from August 3rd from Katie Tonin, T-o-n-i-n, to a

10 bunch of people with the board being the "to" line and a

11 bunch of other people in the CC.

12 First question is going to be do you recognize the

13 document.

14 A Yes, I do. As a Kik board meeting document.

15 Q And this is an e-mail that was sent to you at the

16 board?

17 A That's right.

18 Q I'm going to ask a very practical question. Can

19 you turn to the second page, 6115.

20 A Yes.

21 Q This image appears on a lot of the board decks.

22 A Yeah.

23 Q What is this?

24 A Two millennials talking to each other.

25 Q That sounds great. All right.

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1 MR. FONDO: That was the burning question of the

2 day.

3 MR. MITCHELL: Got to ask those questions.

4 MR. SCHLEGELMILCH: It says Shutterstock. It'll

5 probably show up --

6 MR. MITCHELL: Yeah. Right. No. I was just

7 wondering.

8 BY MR. MITCHELL:

9 Q Okay. So I wanted to use this to sort of help

10 refresh your recollection. In early August, did the board

11 discuss the Kin offering again?

12 A Yes. Looking at this document, the board

13 discussed the Kin offering again.

14 Q And if I could turn you to the page at 6120.

15 A Yes.

16 Q So this -- am I correct that this page is a

17 proposal from management to increase the cap from 100

18 million to 125 million?

19 A That's my understanding.

20 Q Okay. And so do you remember what the board

21 decided to do at that meeting -- whether the board decided

22 to raise the cap?

23 A I should know this. I have to be honest. I just

24 can't recall what we ended up deciding on that.

25 Q Okay.

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1 A But I know there was a discussion, I just don't

2 remember what the resolution was.

3 Q All right. And I'll -- and I'll give you the

4 board minutes in a second --

5 A Right.

6 Q -- just to -- if that will help refresh your

7 recollection.

8 But the concept at this point -- sorry. At this

9 point in time, Kik was in the middle of a -- of an offering

10 for either 100 or \$125 million?

11 A Mm-hmm.

12 Q Sorry. Is that correct?

13 A Yes.

14 Q And then, in the text under there, you can see

15 that it says, "Regulation continues to be ambiguous around

16 TDEs. SEC has provided additional but limited guidance

17 around TDEs in the form of a tort Section 21(a) Report.

18 Comfort level has increased as the SEC utilized the Howey

19 Test as the framework for analyzing when a token sale is a

20 security, which is the framework that the company has

21 utilized."

22 Do you remember any discussion around this?

23 A All of the discussions that occurred around the

24 regulators were done with counsel. So if there was a

25 discussion that occurred, it occurred with counsel.

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1 Q Sorry. One way or the other. If there was no

2 conversation, that could be good -- that's one answer. Or

3 the other answer would be --

4 A There was --

5 Q -- you can't answer the question?

6 A There was -- there was conversation --

7 MR. FONDO: Or that you don't remember.

8 BY MR. MITCHELL:

9 Q Or you don't remember. Yeah. Right. Sorry.

10 There was -- you remember -- let me start over.

11 Am I correct that you remember conversations on

12 this subject, but they were with counsel?

13 A I -- I don't remember a conversation on this

14 specific subject. There's -- conversation of regulatory

15 affairs and so forth related to this was a continuous

16 discussion with counsel throughout this process.

17 So I don't -- so I'm trying to be accurate. I'm

18 sorry. Because I did what I said what I wouldn't do

19 earlier, which is I didn't let you finish your question.

20 So I don't remember specifically on this subject.

21 But, broadly, there were discussions around regulatory with

22 counsel and the board.

23 Q Okay. And then it says, "The company

24 differentiates itself since, at the time of the public sale,

25 they have an initial product which may be utilized in the

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1 Kik messenger. We continue to have a user base, and we
 2 continue to be an operating company unlike many of the
 3 companies that have conducted recent TDEs."
 4 Do you see where I read that?
 5 A I do. Yeah.
 6 Q Was that -- does that correctly summarize Kik's
 7 position?
 8 A That -- that correctly summarizes their position
 9 at that point in time.
 10 MR. FONDO: Is that based on your recollection or
 11 based on reading the document?
 12 THE WITNESS: It's based on reading this document.
 13 MR. FONDO: Okay. So just -- just to get -- they
 14 don't want you to read the document.
 15 THE WITNESS: Okay, okay. Sorry.
 16 MR. FONDO: They want to know what your
 17 recollection is. Okay?
 18 THE WITNESS: So the -- my recollection in terms
 19 of the specifics on a line like this are just -- it's
 20 just not specific enough to be able to be helpful on
 21 something this detailed. I mean, this was a process
 22 that went on for many, many months and lots and lots of
 23 conversations that occurred.
 24 So if you said to me, on this date, do I recall
 25 something that fits the words in this sentence, I can't

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1 Q You don't remember whether they got it or not?
 2 A No, I don't.
 3 Q Did Kik sell the Kin tokens in the September sale
 4 in Canada?
 5 A I don't recall.
 6 Q Can you turn to page 6124. Again, I'm just
 7 looking to -- remember --
 8 A Yeah.
 9 Q In early August, was the company planning to sell
 10 tokens to the public around August 22nd?
 11 A I don't remember the dates specifically. I would
 12 simply have to refer to this document.
 13 Q Can you go to 6130. Do you see the section on
 14 6130 that discusses D&O insurance?
 15 A Yes.
 16 Q It says, "Kik currently evaluating D&O policies,
 17 received quotes from two of the 20 applications. Limit: 25
 18 million, deductible of 25K for cost of 55K per year."
 19 Do you see that?
 20 A Yes, I do.
 21 Q So was Kik evaluating new D&O insurance at that
 22 time?
 23 A Yes, they were.
 24 Q Why?
 25 A Because of the perception of increased risk

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1 tell
 2 you that that's the case to be specific.
 3 BY MR. MITCHELL:
 4 Q Okay. Then the next line says, "We delayed the
 5 TDE to enhance the initial product for which Kin" -- "for
 6 which Kin will be used in the Kik messenger." Do you see
 7 where I read that?
 8 A I do.
 9 Q Did Kik delay the TDE or the sale to the public
 10 for some reason?
 11 A I don't recall whether there was a delay in the
 12 TDE or not.
 13 Q It says, "We have integrated a full wallet." Do
 14 you see where I read that?
 15 A Yes.
 16 Q Did Kik integrate a full wallet into the Kin --
 17 Kik app?
 18 A I don't know.
 19 Q Okay. It says that -- do you see, at the bottom,
 20 it says, "We will have preliminary feedback from the OSC,
 21 Ontario Securities Commission"?
 22 A I see that.
 23 Q Did the company ever get feedback from the Ontario
 24 Securities Commission?
 25 A I don't recall.

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1 associated with the -- the -- the new strategy.
 2 MR. FONDO: Let me -- let me -- just hold on --
 3 just hold a second.
 4 So to the extent any of these communications are
 5 with -- are with counsel --
 6 THE WITNESS: Right.
 7 MR. FONDO: -- I would instruct you not to answer.
 8 If you know otherwise outside of --
 9 THE WITNESS: Well --
 10 MR. FONDO: -- conversations with counsel --
 11 THE WITNESS: -- they were --
 12 MR. FONDO: You can answer the --
 13 THE WITNESS: -- 100 percent with counsel, so --
 14 MR. FONDO: So --
 15 BY MR. MITCHELL:
 16 Q What --
 17 MR. FONDO: -- then I'll instruct him --
 18 BY MR. MITCHELL:
 19 Q Sorry. What counsel?
 20 MR. FONDO: -- not to answer that question.
 21 BY MR. MITCHELL:
 22 Q What counsel?
 23 A Company -- company counsel.
 24 Q Sorry. Inhouse counsel? I need the -- what
 25 lawyer was involved?

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1 A Cooley.

2 Q And is that -- we've met a lot of Cooley lawyers.

3 So is it Nancy Wojtas?

4 A Nancy is the head lawyer that has worked with Kik.

5 We've interacted with other people but Nancy is the person

6 that we've interacted with the most.

7 BY MR. LEASURE:

8 Q Did Kik increase its D&O insurance in 2017?

9 A I actually don't know.

10 BY MR. MURTHA:

11 Q Who is paying for your legal bills related to this

12 investigation?

13 A We're --

14 MR. FONDO: So why is that relevant to this

15 investigation? I'm not going to -- I'm going to instruct

16 him not to answer that question.

17 MR. MURTHA: You're instructing him not to answer

18 on the basis of relevancy?

19 MR. FONDO: Well, privilege, too.

20 Why -- why do you need to know who's paying his

21 legal bills?

22 MR. MURTHA: Because we were just talking about a

23 director and officer insurance policy. So I'm asking

24 whether or not he's being covered by that policy or not.

25 MR. FONDO: That's a different question.

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1 BY MR. MURTHA:

2 Q Are you being covered by that policy?

3 A Not that I know of.

4 BY MR. MITCHELL:

5 Q Sorry. So did -- did you ever hear about Kik's

6 conversations with the Ontario Securities Commission about

7 the proposed offering?

8 A I don't recall.

9 Q You don't remember hearing about them?

10 A I don't, no.

11 Q So the -- the public sale happened in September;

12 is that right?

13 A I don't recall the exact dates. If -- if you have

14 a schedule of dates, I can tell you if it looks right to me,

15 but I don't recall the exact dates.

16 Q Okay. Let me back up one second. Who -- who

17 decided that -- when the sale would happen?

18 A The -- there was discussion between board and

19 management and counsel around the timing of the -- of the

20 offering.

21 Q And who made the decision about, okay, this is the

22 time we're going to do it?

23 A It was ratified by the board.

24 BY MR. LEASURE:

25 Q Can I ask, in 2017, I think you estimated -- you

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1 were on the Kik board in 2017, correct?

2 A Correct.

3 Q And you were also on, I think you estimated six or

4 seven other boards, something in that range?

5 A Correct.

6 Q And, also, at Foundation, I take it you were also

7 responsible for reviewing investments by Foundation

8 Capital's various investment funds, correct?

9 A Correct.

10 Q I take it that's a lot of work, too?

11 A I think you should be careful when you assume.

12 Q Fair enough.

13 A So it depends.

14 Q I want you to help me --

15 A And I say that -- I'm not saying that to be

16 joking. It just depends. If I have a number of products and

17 heavy diligence, then the load is quite high. If I don't

18 have a number of projects and heavy diligence, it's not as

19 high.

20 Q So projects can be lumpy in your line of work?

21 A That's right.

22 Q Okay. If you had to estimate in 2017 what

23 percentage of your work time was devoted to -- to your

24 responsibilities on Kik's board --

25 A Right.

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1 Q -- as opposed to all the other things that you do

2 --

3 A Right.

4 Q -- what percentage of time would it have been?

5 A I have no idea. I really don't. It just depends

6 on what was happening at the time, how many meetings

7 relative to other meetings. I just don't know.

8 It -- it was more than average just simply because

9 we were having more interactions and calls around this. But

10 that's -- that's probably the best I can do.

11 Q Was the Kin offering a significant percentage of

12 your work and concern in 2017?

13 MR. FONDO: As a member of the board of Kik?

14 MR. LEASURE: I'm talking about as his job. He's

15 doing a lot of things -- different responsibilities for

16 Foundation Capital.

17 THE WITNESS: Kik took more than the average board

18 in the year 2017, and Kin was the biggest topic.

19 BY MR. LEASURE:

20 Q Of course. That's because it's raising \$100

21 million, correct?

22 A Actually, it's -- to be blunt, whether it was

23 raising a dollar, it's just simply a new concept. And so

24 everybody had to learn a new concept, so --

25 Q So there have been a lot of sort of particular

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1 meetings or discussions today that you haven't recalled the
 2 details of --
 3 A That's right.
 4 Q -- which is fine. You've identified when you do
 5 and you don't.
 6 And from our perspective, it is -- the Kin
 7 offering was -- was a different topic area and a sizable
 8 amount of money being raised. And so we're trying to
 9 understand, you know, if there is a reason why you wouldn't
 10 remember particular discussions that we've gone over today.
 11 And so I guess I'm offering you the opportunity --
 12 if there's some reason you -- that other -- your other work
 13 or other responsibilities -- why you're not able to remember
 14 in the -- in specific detail about the Kin offering and the
 15 events that led up to it, we'd like to understand.
 16 A I -- I mean, I -- the amount of money raised
 17 whether it's through an offering or through some other thing
 18 is pretty much irrelevant to your question.
 19 Q Okay.
 20 A It's not -- that's just not the relevant point.
 21 Sometimes it takes more work to raise \$2 million for a
 22 company than it does to raise \$100 million for a company.
 23 So that -- that just isn't the driver. It depends on what's
 24 happening within it and where your expertise is.
 25 I sold a company during that time period, Skycure.

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1 I spent an enormous amount of time on it. I'm also an
 2 expert in mobile security. I'm comfortable with the
 3 products set, I'm comfortable with the Israeli engineering
 4 teams. There's a whole bunch of things that are -- that
 5 made me the board member to go to on that particular
 6 project.
 7 And so we sold the company and executed on that.
 8 So
 9 I spent a lot of time on that one, too.
 10 Q So I understand that. And, obviously, I
 11 understand your point on the dollar amount, that issue, and
 12 whether that would or wouldn't need your involvement.
 13 Again, we're trying to understand if there's any
 14 factors we're not thinking of that would lead you to have
 15 either been less involved in the Kin offering or account for
 16 some failures to recall specific events leading up to that.
 17 I'm offering you any -- an opportunity to give any detail
 18 that might be helpful with regards to that.
 19 THE WITNESS: Do you want to discuss? I don't
 20 know.
 21 MR. FONDO: Yeah. Could we take a break?
 22 MR. LEASURE: Not while I'm -- sorry. Honestly,
 23 our practice is, when a pending is question -- if you
 24 have a privilege issue, that's fine, but the question
 25 is pending.

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1 BY MR. LEASURE:
 2 Q And it's an offer, if you have any detail you can
 3 offer us.
 4 A I wouldn't offer anything unless I got an
 5 opportunity to speak with counsel.
 6 Q All right. We can move on then.
 7 BY MR. MITCHELL:
 8 Q Okay. This period, August, summer, are there
 9 management issues at Kik?
 10 A Define management issues. There are management
 11 issues at every company.
 12 Q Sure.
 13 A There are management issues in this building, I
 14 can assure you.
 15 Q Turnover?
 16 Oh, we can assure you that. Yeah.
 17 MR. MURTHA: We're clear about that.
 18 BY MR. MITCHELL:
 19 Q Yeah, yeah, yeah. Right.
 20 Turnover? Like, there's turnover?
 21 A There was -- there was turnover. Yeah.
 22 Q What was the turnover that was a problem?
 23 Oh, sorry. What was the turnover?
 24 A I don't recall the exact statistics on the
 25 turnover, but there were people that were getting offers

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1 from other companies, and they were choosing to go to those
 2 companies.
 3 Q And did it raise questions about Ted Livingston's
 4 role as the CEO to you?
 5 A I don't know that that specifically is what would
 6 raise the questions for Ted as the CEO. But it's a factor
 7 in any discussion about management.
 8 Q Did you have questions about Ted's role as the CEO
 9 in this period in August, you know, the period of summer
 10 before the sale?
 11 A I had Ted's -- I had questions about Ted's role as
 12 the CEO throughout my time at Kik.
 13 Q Why?
 14 A He's a very talented young man and this was his
 15 first job. And there's just a lot of learning that goes
 16 along with that. And we got into kind of a heavy
 17 operational element in our business, even prior to the
 18 offering discussions. Then the question was do we need
 19 somebody who had more experience at an operating level.
 20 Q And what was your answer to that question?
 21 A I was intrigued by the idea that we should be
 22 considering to have somebody with more experience around an
 23 operating level prior to any of these discussions.
 24 Q And what was Ted's response?
 25 A You could actually have a conversation with Ted

Page 230

1 around these things. And there was not a -- there was no
2 cut and dry response. It was -- it was sort of a dialogue
3 over a period of time.

4 Q And was there any attempt to remove him as CEO in
5 the second half of 2017?

6 A I don't recall an attempt to remove him as CEO.
7 We had discussions about who was the right long-term CEO for
8 the business throughout my time at Kik and whether that
9 needed to be somebody who had a different set of operational
10 experiences. So I would limit my answer to your -- your
11 time frame question.

12 Q So those conversations went on longer than my time
13 frame?

14 A That's correct. As they do on every one of my
15 boards.

16 MR. MITCHELL: So the --

17 MR. FONDO: Can we take a break for a minute?

18 MR. MITCHELL: Of course. We're going to -- oh,
19 you're going to tell us when we'll take a break.

20 THE VIDEOGRAPHER: Going off the record. The time
21 on the monitor is 3:42 p.m.

22 (Recess.)

23 THE VIDEOGRAPHER: We are back on the record. The
24 time on the monitor is 4 o'clock p.m.

25 BY MR. MITCHELL:

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1 A I think -- I'm not being -- I think the date of
2 everything changed over that time period. Everything
3 iterated as we went along.

4 Q And what was -- what drove the -- or what
5 influenced the date at which Kik sold the tokens to the
6 public?

7 A I'm trying to think of what -- one was the timing
8 around what was happening in the market. The other was, you
9 know, the -- the feeling among the company of being ready to
10 go to the market with the idea. You know, having gotten the
11 white paper completed and having completed the other pieces
12 of it -- so, really, essentially kind of following the
13 process that was laid out by the consultant and by the white
14 paper and trying to achieve those things within a certain
15 timeframe.

16 Q And the -- that consultant was CoinFund?

17 A CoinFund. Yeah.

18 Q And so, sort of walking through a couple of those
19 different things, how did the market -- the overall market
20 affect the timing of Kin's -- Kik's sale?

21 A The overall market -- just in the form of any
22 market, markets go warm and cold. And so the notion was if
23 the market was going to go cold, meaning all the sudden if
24 ICOs were not popular and the company was not going to be
25 successful, then that would be not as good as being out when

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1 Q Mr. Holland, during the break, did you any
2 substantive conversations about the case with the Staff?

3 A No, I did not.

4 BY MR. MITCHELL:

5 Q So, before, we were leading up to the public sale,
6 the sale when Kik sold Kin tokens. At some point, Kin --
7 Kik did sell Kin tokens?

8 A Yes.

9 Q And was that over the summer -- sorry.

10 Do you remember when it was?

11 A I don't remember the exact dates.

12 Q Do you mean what month?

13 A They were in the -- the second half of '17 was the
14 -- the target area.

15 Q Target area. And did the target time change over
16 time?

17 A The -- from the very original conversations that
18 we had, there was an initial notion of, like, there would be
19 a certain amount of timing, a certain amount raised, and so
20 forth. And then those things just evolved and got kind of
21 sharper as we got closer and closer to the -- to the actual
22 offering.

23 Q But did the date of the -- did the date of the --
24 of the sale to the public change during the time that you
25 were -- during the -- over the course of 2017?

Page 233

1 the market was open and you were actually able to execute on
2 those things.

3 Q So it was a -- there was a -- was there a
4 discussion inside the company about trying to make this
5 happen while the market was still open?

6 A Yes.

7 Q And was that -- do you know whether that
8 discussion was -- whether people at Kik also sort of
9 discussed that issue with some of the people who were buying
10 SAFTs?

11 A I don't know the answer to that.

12 BY MR. MURTHA:

13 Q So I've seen -- I've reviewed a lot of documents
14 in this case.

15 A Yeah.

16 Q So I've seen several e-mails, I believe, in the
17 January 2017 time period saying -- and I might be off by a
18 couple of dollars here or there -- saying that, you know,
19 Kik has \$23 million in the bank and, you know -- you know,
20 continue at the current burn rate, that money was going to
21 be gone by October 2017.

22 Was that a factor in the timing of the ICO?

23 A That was a factor in the timing of pursuing
24 strategic options for the company. And the ICO was one of
25 the strategic options. It would've also have been a factor

Page 234

1 if we decided to cut the burn or do any number of things.
 2 It was -- it was a forcing function for making a strategic
 3 decision around the company.
 4 BY MR. MITCHELL:
 5 Q One of the other things I think you mentioned in
 6 response to my earlier question about sort of what -- what
 7 influence the timing was when the company felt it was ready
 8 --
 9 A Right.
 10 Q What -- what was your understanding of what the
 11 company needed to have done to be ready?
 12 A Was the -- the goal at the time and the
 13 discussions was to try to achieve as many of the things that
 14 were suggested in the white paper and to follow the course
 15 that was laid out when the consultant had come in and talked
 16 to the company about the timing of an ICO.
 17 Q And what was -- what was that? What did the
 18 consultant say?
 19 A They just simply walked you through the mechanics
 20 of you have to do step 1, step 2, step 3, step 4. And it
 21 was just simply of, like, what -- how much time would it
 22 take to do that.
 23 Q And what types of things had to be done?
 24 A I -- I'd have to go back and look at the specific
 25 steps that were going on, but it was just simply the -- the

Page 235

1 mechanics associated with actually executing on the ICO.
 2 Q But that's on the idea of sort of, like, writing a
 3 smart contract, having the -- having addresses, getting all
 4 that information, that kind of stuff?
 5 A Or -- yes, the mechanics and logistics of
 6 organizing the process.
 7 Q Did CoinFund tell Kik that there needed to be an
 8 MVP before the sale could happen?
 9 A I don't know.
 10 Q So earlier --
 11 A Sorry. Those were some good looks. Sorry.
 12 Q Yeah. Earlier -- so earlier --
 13 MR. SCHLEGELMILCH: Yeah. Stunned.
 14 BY MR. MITCHELL:
 15 Q Yeah. If you want to, I'm going to -- we were
 16 discussing the MVP earlier with particularly -- Exhibit 49
 17 was that board document that has the definition of it.
 18 A Yep. I have it here. Yeah.
 19 Q Did people -- did people want to buy Kin to get
 20 access to premium sticker packs that are discussed in the --
 21 in the definition of MVP?
 22 A My belief is that people were going to buy Kin to
 23 be part of the Kin Ecosystem and the sticker packs were part
 24 of the ecosystem. I can't comment on how much of that was
 25 part of what they would do but it would've been one of the

Page 236

1 elements within it. There are commonly known to actually
 2 have more utility than you would imagine within messaging
 3 worlds, and particularly among young users, so.
 4 Q Like what age is young users to you?
 5 A Well, in the case of Kik's original business and
 6 Snapchat, it would be, like, dad all the way down to middle
 7 school. But that's a different thing so --
 8 Q And how high up when, you say young users?
 9 A You know, I'd be speculating. But, I mean, there
 10 are people that play Bedazzled, and Bejeweled and things
 11 like that -- to me, that just feel like children's games,
 12 and I see them my age playing them all the time. So it's --
 13 I don't know how to -- I don't know how to define peoples'
 14 taste around those things, so --
 15 MR. FONDO: I see some guilty looks over there.
 16 THE WITNESS: Yeah. So --
 17 BY MR. SCHLEGELMILCH:
 18 Q Were middle schoolers the target audience for Kin
 19 coin?
 20 A No. I don't -- I don't want to confuse things.
 21 I'm talking about Kik's old business, which was -- we'd
 22 spent times on thinking about things that would be offerings
 23 into that.
 24 So I don't -- I don't think of the middle
 25 schoolers as the target for the Kin coin, so --

Page 237

1 BY MR. MITCHELL:
 2 Q So did people -- did people buy the Kin coin to
 3 get premium sticker packs?
 4 A That would be the expectation but not -- not just
 5 the premium sticker packs. It's simply to support the
 6 ecosystem. And there would be many, many things associated
 7 with that, like games and like other things that are in
 8 other digital ecosystems.
 9 Q Did any of those things exist at the time that Kik
 10 sold the Kin tokens?
 11 A No.
 12 Q So -- and sorry. And what's your -- what's your
 13 basis for thinking that people would buy the Kin tokens even
 14 in part for sticker packs?
 15 A Because of the -- again, I'm just going to repeat
 16 myself. It's because to support the ecosystem around -- the
 17 sticker packs would be just one of the elements within the
 18 ecosystem.
 19 Q Okay. And what -- what's your -- what I'm asking
 20 is sort of your basis. What -- what makes you think that
 21 people would buy Kin tokens to get access to the stickers?
 22 A What -- it's not a -- this isn't like a board
 23 thing or any other kind of thing. I've just seen many, many
 24 virtual worlds, and I've seen people buy digital products
 25 that I am surprised by. And it's just something you get

Page 238

1 used to. Digital swords, digital magic dust, digital things,
2 and it's just a -- you know, I'm not of that world, so I
3 just have to observe it.

4 Q Did anyone who worked at Kik tell you that people
5 would -- that -- that people would buy Kin tokens to get
6 access to the sticker pack?

7 A I don't recall a specific discussion with someone
8 at Kik saying they're going to buy Kin tokens just for the
9 sticker packs. I would've just said what I said before,
10 which is to support the ecosystem which would be a whole
11 range of things over time, and -- and many things that would
12 still need to be developed with developers and partners and
13 things like that, so --

14 Q Who was going to do that developing?

15 A Which -- which developing?

16 Q I don't know. What you were just describing.

17 A We were basically going out to do business
18 development deals with external partners, gaming companies,
19 people who had the sticker packs, people that had emojis,
20 all these other things that then helped in part form the
21 digital community. So we would go out and cut deals,
22 business development deals with those people.

23 Q Kin was going to do that?

24 A The -- one -- so the sequence of things that we
25 were attempting to do here were get this process in place,

Page 240

1 that were consummated by the time you left the board?

2 A I'm hesitant to answer that just because I --
3 there may have been some deals kind of developed along the
4 way. I just don't -- they didn't -- they didn't reach me
5 from a visibility privilege. There were other kind of
6 discussions with gaming platforms and other type of things
7 that I got visibility into. Because they would've been big
8 deals. They would've been big important deals for
9 supporting the ecosystem.

10 Q Okay. But by the time you left the board, none of
11 those big deals were in place?

12 A The board -- the company was prepared to execute
13 on those deals. It was being hampered by the SEC
14 investigation.

15 Q Okay. My question, though, is a little bit more
16 focused than that.

17 A Right.

18 Q I'll ask it again --

19 A Okay.

20 Q -- just for the -- so the record is clear. By the
21 time you left the board, none of those deals were in place;
22 is that correct?

23 A That I know of, none of the big important deals we
24 were trying to get done were in place. They were held up.

25 Q Okay. And, in fact, you can't think of any

Page 239

1 and there has been a plan and the plan is still in place to
2 hire a Kin CEO. And that's -- that's just been harder than
3 -- than we would've expected.

4 BY MR. SCHLEGELMILCH:

5 Q How many of these business deals that you've just
6 described for the ecosystem were in existence at the time of
7 the offering?

8 A I don't know of any that were in existence at the
9 time of the offering. It doesn't mean that there aren't
10 any. I just don't know that -- what was in existence at the
11 time of the offering. I know that since the offering, we've
12 been working with a number of people to try to create those
13 business development relationships. But that's been
14 hampered.

15 Q At the time you left the board, were you -- are
16 you specifically aware of any of these business
17 relationships --

18 A I'm -- I'm aware of several that were under
19 discussion at that time period. They were awaiting
20 consummation in part based on this process.

21 Q Okay. Are you aware of any that are consummated
22 at the time that you left the board?

23 A I'm -- I don't know if any of them were actually
24 consummated by the time I left the board.

25 Q Okay. So you're not -- you're not aware of any

Page 241

1 specific deal that was in place at the time you left the
2 board, correct?

3 A I don't have a specific deal to tell you about by
4 the time I left the board.

5 Q Okay. Thank you.

6 BY MR. LEASURE:

7 Q So just so we're clear, when we're talking about
8 deals, we're talking about attracting people to the -- to
9 the Kin Ecosystem, correct?

10 A That's right. Yeah. The partners.

11 Q Who are the -- who are the parties on a deal?

12 A Gaming platforms, people that have, like, sticker
13 packs, virtual goods. You know, over time, there will be
14 other elements and things that show up in these digital
15 communities. And all of these discussions have been under
16 way.

17 Q And so for the deal, it's those people -- the
18 companies or organizations like that on the one side. Is it
19 Kik on the other side?

20 A Will, it's -- it's the Kin Ecosystem that's on the
21 other side. Kik is in the midst of negotiating those
22 because we don't have a Kin CEO.

23 Q Okay. So, currently, as of the time you left the
24 board, Kik was working with various gaming or other types of
25 companies to attract them to the Kin Ecosystem?

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1 A Kik was working to try to develop the Kin
2 Ecosystem including building out the management team for the
3 Kin Ecosystem. And the idea was that the Kin management
4 team would be able to help execute on all these things. But
5 it was all having to be done kind of in parallel because we
6 had sort of a retarded process around the Kin executive
7 team.

8 Q Okay. Let me just -- so by the time you left the
9 board, was -- did the Kin Foundation or the -- what I'll
10 call the Kin Ecosystem, did it have a management team by the
11 time you left the board?

12 A It didn't have a CEO. We had people that were in
13 the Kik management group that we thought could be good
14 people to join the Kin group. And we thought they could be
15 good executives to join that. But we were hesitant to move
16 people over into that without a CEO.

17 Q Okay.

18 A So there were discussions under way. And I don't
19 know -- and they were actually in realtime. So I don't know
20 what those -- how those were resolved.

21 Q Okay. Putting aside this -- the Kin CEO, who were
22 the other members of the Kin management team at -- in place
23 at the time you left the board?

24 MR. MITCHELL: You mean the Foundation?

25 MR. MURTHA: Yeah.

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1 public as part of the Kin offering?

2 A I don't know. I don't know.

3 BY MR. MITCHELL:

4 Q I'm going to -- I'm going to mark what's already
5 been marked as Exhibit 33.

6 Do you recognize Exhibit 33?

7 A No, I don't.

8 Q Have you -- I'll tell you like -- that appears to
9 one of the premium stickers.

10 A Okay.

11 Q It's got a -- for the record, it has an animal on
12 it. Have you ever seen --

13 BY MR. SCHLEGELMILCH:

14 Q Can I ask a question? There's been some amount of
15 debate. What animal is this? We've seen it on a lot of
16 these stickers. And the SEC printers are poor, even the
17 color printers. And it looks like either brown or black.

18 MR. MITCHELL: For the record, I'm giving him
19 Exhibit 32 to provide him a second look.

20 BY MR. MITCHELL:

21 Q Have you ever seen Exhibit 32?

22 A I don't think so.

23 BY MR. SCHLEGELMILCH:

24 Q And the question is, is this a skunk, weasel, or
25 third animal?

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1 THE WITNESS: I don't -- I don't know because we
2 were so focused -- as a board, we were focused on recruiting
3 a CEO. So I don't know what has been done to fill in the
4 lower ranks around that.

5 BY MR. LEASURE:

6 Q So after the public sale, there were efforts made
7 to develop the Kin Ecosystem; is that fair?

8 A That's my understanding.

9 Q Okay. And let's say, hypothetically and God
10 forbid, that Kik went out of business the day after the
11 public sale --

12 A Right.

13 Q -- or just stopped supporting Kin for whatever
14 reason. Let's just say Kik was out of the picture.

15 A Right.

16 Q Could those efforts have gone forward without Kik?

17 A I don't see how.

18 MR. LEASURE: Okay. That's all I had.

19 BY MR. MITCHELL:

20 Q I'm going to bring -- I apologize. I'm going to
21 bring you back to the -- the MVP --

22 A Mm-hmm.

23 Q -- or -- and the sticker packs.

24 A Yeah.

25 Q Did Kik -- did Kik market the sticker packs to the

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1 A I don't know the answer to that question. I would
2 guess the answer is it's a wolverine, but --

3 Q A wolverine?

4 A Yeah.

5 MR. MURTHA: That was my guess, too.

6 BY MR. MITCHELL:

7 Q But what makes you think it's a wolverine?

8 A Because it's a Canadian company, and we have
9 wolverines in Canada.

10 Q Okay.

11 A I don't know the answer. I'm just making --
12 making that up so --

13 Q Did the board have a name for the -- for the
14 Credit Suisse plan to --

15 A Yes.

16 Q -- sell the -- try to sell the company?

17 A Yeah. I believe it was Project Wolverine. Yeah.

18 Q So I just -- again, for the record, is -- Exhibits
19 32 and 33, have you ever seen them before?

20 A I don't recall seeing these. They could've been
21 in an exhibit. But I just don't recall seeing these.

22 Q Have you ever seen this character before?

23 A I don't recall seeing the character before. I
24 don't -- I just don't recall the character.

25 Q Sure. Did you have any -- did you -- did anyone

Page 246

1 ever talk to you about -- sorry.

2 Do you have any understanding of how Kik developed
3 the stickers that would be the premium stickers to sell --
4 that would be available to Kin token owners?

5 A I don't know how that was developed. It would've
6 been developed by the product development team. I just
7 don't know.

8 Q Who runs the product development team?

9 A Well, ultimately, the product development team
10 reports up to the CEO.

11 Q Right. But who is the team that -- who is the
12 person -- who under the CEO runs the product development
13 team?

14 A That has changed over time. I don't know who the
15 current leader is because it was changing at the time when I
16 was leaving so --

17 BY MR. MURTHA:

18 Q Did you meet with your lawyers to prepare for
19 testimony today?

20 A I did.

21 Q How long?

22 A Three sessions of about an hour each.

23 Q So you met for three hours total to prepare for
24 today?

25 A About. Yeah.

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1 the document that I'm referring to. That's what --

2 that's

3 what's refreshing my recollection.

4 In the moment, when I'm in the meetings -- and

5 I've been in all but a couple of these meetings -- you
6 know, I'm engaged with the activity that's happening
7 around the meeting. It's just that to then recall it 18
8 months later is very difficult for me, so --

9 MR. FONDO: So his question was in the meeting
10 with counsel, you had said -- so would you mind asking
11 that question again just so --

12 BY MR. MURTHA:

13 Q Sure. Did any of the documents that you reviewed
14 with counsel in preparation for today -- today's testimony
15 refresh your recollection?

16 I think your answer was yes.

17 A The -- in the moment looking at the document, then
18 my recollection felt refreshed in looking at the document.
19 But in terms of, like -- was it like, Oh, now, I remember, I
20 was at this meeting, and this is what -- it wasn't like
21 that. It's like because I have the document, I can remember
22 so --

23 Q Right. And then I guess my next question was,
24 like, which -- which documents you can remember, any -- any
25 documents that --

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1 Q Where did you meet?

2 A At Foundation Capital.

3 Q And who was present during those meetings?

4 A The four of us.

5 Q Nobody us?

6 A Typically, so -- nobody else.

7 Q Did you review documents?

8 A Yes, we did.

9 Q How many documents did you review?

10 A More than five and less than 20. I don't know the
11 exact amount.

12 Q Did any of those documents refresh your
13 recollection?

14 A They did.

15 Q Which ones?

16 A I'd have to look at the specific document to tell
17 you which ones did, but if I was looking at a document, they
18 refreshed my recollection.

19 MR. FONDO: When you say refreshed your
20 recollection, are you saying you -- like, you can set aside
21 a document, and, now, I remember something or --

22 THE WITNESS: Yeah. Fair enough. Sorry. This is
23 a concept that I've -- I've struggled with a little
24 bit.

25 For the most part, when I look at a document, it's

Page 249

1 A Just the -- I mean, the -- I don't remember the
2 specific topics but we went through several topics so --

3 Q Did you talk to anyone about the fact that you
4 were coming here today to testify?

5 A My wife.

6 Q Nobody else?

7 A I don't think so. No. I don't think so. Now
8 that I think about it, no.

9 Q Your partners at Foundation, are they aware --

10 A And my admin knows. She books the travel, so --
11 Angela Vaiamonte. And then Dave Armstrong, who is here
12 today.

13 Q Do they -- do your partners at Foundation -- I'm
14 sorry. Let me rephrase that.

15 A Yeah.

16 Q Are your partners at Foundation aware of the SEC's
17 investigation?

18 A They are.

19 Q But not that you were coming here to today?

20 A I didn't speak to them about coming here to
21 testify. I've been -- tried to be very careful about
22 communication on this.

23 Q Have you told anyone what they should say if
24 they're asked to testify in front of the SEC?

25 A No, I have not.

Page 250

1 Q Have you ever met with or spoke with lawyers at
2 Cooley regarding the SEC's investigation?

3 A Yes, I have, in the context of the board.

4 BY MR. LEASURE:

5 Q Does Kin trade -- to your knowledge, which is all
6 we can ask, does Kin trade on exchanges?

7 A I believe Kin trades on exchanges. I don't -- I
8 don't participate in the exchanges, so I don't own any of it
9 or track it from that perspective. But I believe it trades
10 on exchanges.

11 Q And --

12 A I don't know the names of the exchanges it trades
13 on, but I believe it trades on exchanges.

14 Q And on those exchanges, is it your understanding
15 that you can trade Kin for maybe other -- other coins or
16 even fiat currency?

17 A That's my general understanding but at a kind of a
18 laymen's level. Yeah.

19 Q Sure. Has Kik before or after the sale of Kin
20 made any efforts to get Kin listed or trading on exchanges,
21 to your knowledge?

22 A You know, I don't -- I don't recall. To my
23 knowledge, no, but that's only just simply because I just
24 don't remember being involved in the conversations about
25 getting it on exchanges. It may have been part of the

Page 251

1 overall dialogue, but I just -- it was a lot of detail, so
2 --

3 Q Have you ever heard of any pressure from holders
4 of Kin or SAFT holders to get Kin listed on exchanges?

5 A I don't think I've ever had a conversation with a
6 holder of Kin, a SAFT holder or one of the investors. So
7 no, I would not have received any pressure from those
8 people.

9 BY MR. MURTHA:

10 Q Do you know of the Pantera hedge fund?

11 A I know of Pantera.

12 Q You've never met them?

13 A I have not met them.

14 BY MR. LEASURE:

15 Q Did you ever yourself try and identify -- identify
16 potential investors in Kin or reach out to potential
17 investors in Kin?

18 A I don't recall reaching out to potential investors
19 in Kin. It's not an area that I knew a lot about so I
20 didn't really know who investors are so --

21 BY MR. MURTHA:

22 Q Does Foundation invest in ICOs at all?

23 A Foundation has invested in some of the other
24 companies that have done ICOs. We did a seed investment for
25 equity in a company called Brave that has since gone on to

Page 252

1 what apparently seems to be a successful ICO. And I believe
2 there are some other token sales we've participated in since
3 then, but I just -- I don't have the exact details, so --

4 Q You didn't participate in the Kin token sale?

5 A No.

6 Q Is Kik still a part of Foundation VI?

7 A Yes, it is.

8 BY MR. MITCHELL:

9 Q Couple small things.

10 Did Foundation Capital have a role in running the
11 Kin token offering?

12 A No.

13 Q Did -- did any Foundation Capital entities have
14 any -- did any of them actually offer to sell Kin tokens to
15 anyone?

16 A Not that I know of, no.

17 Q Did any of those entities sell Kin tokens to
18 anybody?

19 A No, not that I know of.

20 MR. MITCHELL: Yeah. So off the record. We're
21 going to go off the record.

22 THE VIDEOGRAPHER: Going off the record. The time
23 on the video monitor is 4:24 p.m.

24 (Recess.)

25 THE VIDEOGRAPHER: We are back on the record. The

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1 time on the monitor is 4:28 p.m.

2 BY MR. MITCHELL:

3 Q Mr. Holland, during the break, did you have any
4 substantive conversations with the Staff about the case?

5 A I did not.

6 Q Okay. So we are done with questions. And we
7 really do appreciate your time. We know that it's both been
8 a significant issue for your firm and for you personally to
9 come here. And it really is helpful for us to understand a
10 lot of things we didn't grasp or didn't understand before,
11 and this is very, very helpful.

12 Is there anything we didn't ask you that, like,
13 you expected us to ask or you want us to know about this
14 offering or about these events that, like, we're not asking
15 you?

16 A No.

17 Q Sometimes we just miss things.

18 A I -- I can't think of anything. I mean, this is
19 such an amazing level of detail compared to the normal
20 course of business that we do that -- it's -- it's
21 fascinating at some level, but no. So I couldn't come up
22 with anything else to ask me about.

23 Q Sounds great.

24 MR. MITCHELL: Do you -- Grant, do you have
25 anything -- I mean, we -- this is an opportunity at this

Page 254

1 point for you to ask him questions. Do you guys want to ask
 2 him questions now?

3 MR. FONDO: No. Thank you.

4 MS. CHESSARI: One thing I wanted on the record is
 5 just designate the transcript as FOIA confidential treatment
 6 requested.

7 MR. MITCHELL: That would be great.

8 MS. CHESSARI: Just to put it on the record.

9 MR. MITCHELL: That would be great. Put it on the
 10 record. I have to be honest with you. The FOIA rules are
 11 beyond me. So if you feel like you also want to send us a
 12 letter on that --

13 MS. CHESSARI: Absolutely.

14 MR. MITCHELL: -- that would be fine, too.

15 Anything else?

16 Okay. So, again, if we had any other questions,
 17 we
 18 would reach out to your client -- to your client -- to your
 19 -- to your lawyers for that. If you have questions, you
 20 want to know things from us, there's a lot of things we
 21 can't answer, but we're happy to have people ask us
 22 questions. So you guys can just talk to these -- these two
 23 and they can reach out to us anytime you want.

24 So, with that, we will go off the record whenever
 25 Steven says.

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PROOFREADER'S CERTIFICATE

1
 2
 3 In the Matter of: KIK INTERACTIVE
 4 Witness: Paul Holland
 5 File Number: HO-13388-A
 6 Date: Friday, June 15, 2018
 7 Location: Washington, D.C.

8
 9 This is to certify that I, Christine Boyce, (the
 10 undersigned) do hereby swear and affirm that the attached
 11 proceedings before the U.S. Securities and Exchange
 12 Commission were held according to the record, and that
 13 this is the original, complete, true and accurate
 14 transcript, which has been compared with the reporting or
 15 recording accomplished at the hearing.

16
 17
 18 _____
 19 (Proofreader's Name) (Date)

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1 THE VIDEOGRAPHER: Going off the record. The time
 2 on the video is 4:30 p.m.

3 (Whereupon, at 4:30 p.m., the examination was
 4 concluded.)

5 * * * * *

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